

(5)  
No. 87-1379



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**In the Supreme Court of the United States**

OCTOBER TERM, 1987

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**UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,  
PETITIONERS**

**v.**

**REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, ET AL.**

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**ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**JOINT APPENDIX**

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**PETITION FOR A WRIT OF CERTIORARI FILED  
FEBRUARY 16, 1988  
CERTIORARI GRANTED APRIL 18, 1988**

137 PP

# In the Supreme Court of the United States

OCTOBER TERM, 1987

---

No. 87-1379

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,  
PETITIONERS

v.

REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, ET AL.

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*ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

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## JOINT APPENDIX

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## PLAINTIFFS

THE REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS  
ROBERT SCHAKNE

## DEFENDANTS

1. U.S. DEPARTMENT OF JUSTICE
2. BENJAMIN R. CIVILETTI,  
Attorney General
3. FEDERAL BUREAU OF INVESTIGATION
4. WILLIAM H. WEBSTER, Director Federal Bureau of  
Investigation

## Cause

5 USC 552  
Freedom of Information Act.

## ATTORNEYS

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331-5000	
G. David Fensterheim	
(address same as above)	

DATE	NR	PROCEEDINGS
1979		
Dec	7	COMPLAINT; appearance; exhibits 1-11.
Dec	7	SUMMONS (6) and copies (6) of complaint issued: U.S. Atty. Serv. 12-10-79; #1 and 2 serv. 12-12; #3 and 4 serv. 12-19.
1980		
Jan	9	ANSWER by defts. to complaint.
Jan	9	CALENDARED CD/N
Mar	17	STATUS CALL. Defts to file affidavit and Vaughn index by 4-21-80; further status call set 5-2-80 at 9:30 a.m. (Rep: J. Moore) Penn, J.
Mar	17	APPEARANCE of William A. McDaniel, Jr. as counsel for pltf.
Apr	2	ORDER filed 4-1-80 allowing pltf. 30 days to file opposition to motion for summary judgment or request for discovery pursuant to FRCP 56(f); setting case for status hearing on 5-2-80 at 9:30 a.m. (N) Penn, J.
Apr	21	MOTION by defts. for summary judgment; statement of material facts; affidavit of David H. Cook; exhibits A-K; affidavit of C. Kenneth Arnold.
May	12	MOTION by pltf. for extension of time to 5-23-80 in which to file their request for discovery.
May	16	ORDER filed 5-13-80 granting motion to pltf. for an extension of time to

DATE	NR	PROCEEDINGS
		5-23-80 to file opposition to motion for summary judgment. (N) Penn, J.
May	23	FIRST request by pltf. for production of documents.
May	23	FIRST set of interrogatories by pltf. to defts.
May	23	MOTION by pltf. for a stay pending discovery of defts. motion for summary judgment; statement of P&A's; affidavit of Daniel J. Meltzer, Esq.; attachments (2).
June	4	REQUEST by pltf. for oral argument on motion for a stay.
June	5	MOTION by defts. for protective order and opposition to pltf. motion for a stay pending discovery; statement of P&A's; attachments A and B.
June	16	TRANSCRIPT of proceedings of 3-17-80, pages 1-8. (Rep: J. McGinn); Court copy.
June	17	STATEMENT of P&A's by pltf. in support of opposition to defts. motion for protective order and reply to opposition to pltf. motion; exhibits A and B.



DATE	NR	PROCEEDINGS
1980		
June	23	OPPOSITION by pltfs. to defts. motion for a protective order.
July	18	REPLY by defts. to pltfs. opposition to motion for protective order.
Aug.	11	WITHDRAW of APPEARANCE of Keith M. Werhan counsel for deft. and enter appearance of Peter W. Waldmeir.
1981		
Apr.	17	WITHDRAWAL of John B. Kuhns as counsel for pltfs. CD/N
Oct	9	MEMORANDUM ORDER filed 10-8-81 granting motion of pltfs. for a stay; directing defts. to file an index and affidavits within 10 days; denying motion of pltfs for leave to take discovery; granting motion of defts. for protective order. (N) Penn, J.
Oct	19	MOTION by defts. for an enlargement of time in which to comply with this Court's October 8, 1981 Memorandum order; P&As.

DATE	NR	PROCEEDINGS
Oct	28	ORDER filed 10-27-81 granting motion of defts. for enlargement of time to and including 11-16-81 within which to comply with this Court's Memorandum Order of 10-8-81. (Signed 10-23-81) (N) Penn, J.
Nov	16	UNOPPOSED motion by defts. for a two-day enlargement of time in which to comply with this Court's Oct. 8, 1981 memorandum order; P&A's.
Nov	18	MOTION by defts. for enlargement of time to 12-7-81 in which to complete their compliance with this Court's order of 10-8-81; P&A's.
Nov	20	ORDER filed 11-19-81 granting motion of defts. for an extension of time to 11-18-81 to comply with order of 10-8-81. (N) Penn, J.
Nov	20	ORDER filed 11-19-81 granting motion of defts. for an extension of time to 12-7-81 to complete designated search and to file supplemental declarations. (N)
Nov	24	NOTICE of defts of filing; declaration Melvin D. Mercer, Jr w/exhibits A and B; declaration of Anthony T. Riggio w/exhibit A.
Dec	7	MOTION by defts. for enlargement of time in which to serve defts. supplemental declaration of Anthony T. Riggio; P&A's.

DATE	NR	PROCEEDINGS
1981		
Dec	12	ORDER filed 12-11-81 granting motion of defts. for an extension of time to 12-11-81 to file supplemental declaration of Anthony T. Riggio with attachments. (N) Penn, J.
Dec	11	NOTICE by defts. of filing; supplemental declaration of Anthony T. Riggio; exhibits A and B.
Dec.	14	MOTION by defts. for an enlargement of time in which to further respond to this Court's 10-8-81 memorandum opinion; P&A's.
Dec	16	STATUS CALL. Defts. to file comprehensive statement and detailed index or a memorandum as to why it should not be filed by 12-29-81. (Rep: J. McGinn) Penn, J.
Dec	17	ORDER directing defts. to file by 1-29-82 a further response to memo/order of 10-8-81; to comply with 10-8-81 by filing an index or a memo of law and a memo on certain policy for the last 10 years (N) Penn, J.
Dec	29	WITHDRAWAL OF Appearance of Daniel J. Meltzer, Esq. as counsel for pltfs. CD/N
1982		
Jan	6	APPEARANCE of Kevin T. Baine as additional counsel for pltfs. CD/N

DATE	NR	PROCEEDINGS
Jan	29	MOTION by defts. for an enlargement of time in which to further respond to this Court's 12-17-81 order; P&A's.
Jan	29	NOTICE by defts. of filing (FOIA-Search Declarations); attachment 31; attachments A-E; attachment 32; attachments A and B; attachment 33; exhibits A-E; attachment 34; attachments A-W; attachment 35; exhibits A, B, and C.
Jan	29	NOTICE by defts. of filing (Dept. of Justice Policy Declarations); attachment 1; exhibits A and B; attachment 2; exhibits A and B; attachments 3 and 4; exhibits A, B, and C; attachment 5; attachment A; attachment 6; exhibit A; attachments 7-10; exhibit A; attachments 11-14; exhibits A and B; attachments 15-18; exhibits A-D; attachments 19-23; attachments A, B, and C; attachments 24-30.
Feb	1	MEMORANDUM of P&A's by defts. in partial response to this Court's 12-17-81 order, and in support of defts. argument that they can neither confirm nor deny the existence of the requested records; memorandum.
1982		
Feb	3	ORDER filed 2-1-82 granting motion of defts. to and including 2-1-82

DATE	NR	PROCEEDINGS
		within which to serve their further response to this Court's 12-17-81 memorandum order. (N) Penn, J.
Feb	12	APPEARANCE of Kevin T. Baine as counsel for pltfs. CD/N
Feb	19	APPEARANCE of G. David Fensterheim as counsel for pltfs. CD/N
Mar	16	TRANSCRIPT of Proceedings taken on 12-16-81; pps 1-61; Court's copy; Rep: J. M. McGinn.
1983		
Feb	4	MOTION by Pltffs. for summary judgment and opposition to defts' motion for summary judgment; Affidavit of Robert Schakne; Affidavit of Jack C. Landau; Statement of material facts; Exhibits 1 through 11; P&A's; Table of Contents; Table of Authorities.
Feb	17	MOTION by defts. for enlargement of time to serve defts' response to pltffs' Motion for summary judgment and in opposition to defts' motion for summary judgment; P&A's.
Feb	25	ORDER filed 2-23-83 granting motion of defts. for extension of time to 4-18-83 to respond to motion of pltf. for summary judgment. (N) PENN, J.
Apr	15	MOTION by defts. for enlargement of time to respond to pltffs' motion for

DATE	NR	PROCEEDINGS
		summary judgment and memo in opposition to defts' Apr. 21, 1980 motion for summary judgment; P&A's.
Apr	25	ORDER filed 4-20-83 granting motion of defts. for an extension of time to 4-21-83 to respond to motion of pltf. for summary judgment and opposition to motion for deft. for summary judgment. (N) PENN, J.
Apr	29	NOTICE OF FILING by Defts: Attachment - Deft's Suggestion of Partial Mootness w/Exhibits 1 through 8.
Apr	29	MEMORANDUM by defts. of points and authorities in opposition to pltffs' motion for summary judgment, and in reply to pltffs' opposition to defts' April 21, 1983 motion for summary judgment; Table of Contents; Table of Authorities; Attachments A through H.
May	9	MOTION by Pltffs. for enlargement of time to respond to defts' opposition to pltffs' motion for summary judgment; P&A's.
May	12	ORDER filed May 11, 1983, granting motion of pltf. for an extension of time to 5-25-83 to respond to suggestion of defts. (N) PENN, J.
1983		
May	24	MOTION by Pltffs. for enlargement of time in which to respond to defts'



DATE	NR	PROCEEDINGS
		opposition to pltffs' motion for summary judgment; Memo of P&A's.
June	13	REPLY by Pltffs. to deft's memorandum in opposition to pltffs' motion for summary judgment: Exhibits A through D. "Let this be filed" (fiat) Penn, J.
June	13	RESPONSE by Pltffs. to defts' suggestion of partial mootness. "Let this be filed" (fiat) Penn, J.
Sep	21	MEMORANDUM by defts. of points and authorities in further support of summary judgment and partial mootness; Attachment I.
1984		
May	7	APPEARANCE of Robert S. Lavet as counsel for defts and withdraw Peter W. Waldmeir. (dj)
May	7	NOTICE of deft of filing the attached; Attachment. (dj)
1985		
Feb	27	REQUEST for pltfs. for oral argument. (vajm)
Apr	16	ORDER setting hearing on cross motion for summary judgment on 5-3-85 at 9:30 a.m. (N) PENN, J. (dj)
May	3	CROSS-MOTION for summary judgment heard and taken under advisement; deft to submit in camera materials by 5-8-85. (Rep. J. McGinn) PENN, J. (dj)

DATE	NR	PROCEEDINGS
May	8	NOTICE of deft of compliance with Court's oral request and filing of in camera declaration. (dj)
Jul	25	ORDER denying motion of pltf. for summary judgment; granting motion of deft. for summary judgment; dismissing case with prejudice. (N) PENN, J. (br)
Aug	5	MEMORANDUM. (N) PENN, J. (fs)
Aug	19	NOTICE by deft. Department of Justice of Compliance with Court's request and filing of in camera declaration. (kc)
Aug	19	MEMORANDUM filed 8-16-85 (N) In camera submission filed under seal in Rm. 1800. PENN, J. (kc)
1985		
Oct	3	NOTICE of Appeal by pltf. from order entered on 7-25-85 and memorandum entered on 8-5-85; \$5.00 filing and \$65.00 docketing fee paid and credited to U.S. Copies mailed to Vincent M. Garvey. (kc)
Oct	9	PRELIMINARY RECORD transmitted to USCA; USCA 85-6020. (kc)
Oct	15	CERTIFICATE OF COUNSEL by pltfs. re: not ordering transcripts. USCA/N RECEIPT ACKNOWLEDGED. (1a)
Oct	15	STATEMENT OF ISSUES by pltf. USCA/N RECEIPT ACKNOWLEDGED. (1a)

DATE	NR	PROCEEDINGS
Oct	23	MOTION by pltfs. to extend the time for filing a New Notice of Appeal, memorandum. USCA/N RECEIPT ACKNOWLEDGED. (1a)
Oct	30	OPPOSITION by defts. to pltfs' motion to extend the time for filing a notice of appeal, exhibits A & B. USCA/N (1a)
Nov.	6	ORDER extending time 10 days from date of entry of order for pltfs. to file a new notice of appeal. (N) JOHN G. PENN, J. USCA/N RECEIPT ACKNOWLEDGED. (1a)
Nov.	8	REPLY MEMORANDUM by pltfs. to defts' opposition to pltfs' motion to extend the time for filing a notice of appeal, exhibits 1 & 2. USCA/N RECEIPT ACKNOWLEDGED. (1a)
Nov.	12	NOTICE by plif. of appeal from order entered on 7-25-85 and memorandum opinions entered 8/5-6/85; \$5.00 filing and \$65.00 docketing fee paid and credited to the U.S.; Copies mailed to Vincent M. Garvey. (df)
Nov	12	PRELIMINARY RECORD transmitted to USCA; USCA #85-6144 (df)
Dec.	20	TRANSCRIPT OF PROCEEDING OF 5-3-85: pages 1-54. (REP. J. MCGINN) (1a)

## GENERAL DOCKET

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

85-6020

REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS,  
ET AL., APPELLANTS

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.

## APPEAL FROM THE DISTRICT COURT

## COUNSEL: APPELLANT/PETITIONER TYPE

Kevin T. Baine PRI  
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 Victoria Louise Radd

Search Group, Inc. movant for leave to file brief as amicus  
 curiae:

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 Kirkpatrick & Lockhart  
 1800 M Street, N.W.  
 South Lobby 20036

## COUNSEL: APPELLEE/RESPONDENT TYPE

US DOJ 20530 US  
 Leonard Schaitman 633-3441  
 Douglas Letter 633-3427  
 Appellate Staff  
 Civil Division, Room 3348



John F. Daly  
Joseph E. diGenova, USA  
Richard K. Willard

Popular Name:

Number of Case/Order Below: CA 79-03308

Case Type: CV.US.

JS-34: Yes ☒ No ☐

Judge Below: Penn (9055)

Date of Judg./Order: 07-25-85 & 08-05-85

USDC Offense/Nature of Suit Code: 2895

Date Docketed: 10-18-85

Date Filed in Dist. Court: 12-07-79

Notice of Appeal Filed: 10-03-85

U.S. Mag: ☐ Direct ☐ Indirect

#### FINANCIAL

USA

IFP

USDC

✓

RECEIPT

#### REMARKS

85-6020

20-E's Supp Memo in Support of Sugg. of Rehear  
En Banc (11/04)

DATE	FILINGS – PROCEEDINGS
(B)10-18-85	Copy of notice of appeal and docket entries from Clerk, DC (n-2)
(B)10-18-85	Docketing fee was paid in the District Court on 10-03-85
(B)10-18-85	Docketing statement was mailed to counsel for appellant
(B)10-18-85	Notice from Clerk, DC with copy of statement pursuant to Rule 10(b)
(J)10-25-85	Notice from Cler, DC attaching motion extend time for filing a new notice of appeal
(T)11-01-85	Notice from Clerk, DC attaching copy of opposition to motion to extend time to file a new notice of appeal [15]
(T)11-07-85	4 – Appellant's docketing statement (p-7) [15,23]
(T)11-12-85	Notice from Clerk, DC attaching (1) order and (2) reply memorandum [15]
(E)12-09-85	Clerk's order, sua sponte, that Nos. 85-6020 and 85-6144 are hereby consolidated. A briefing schedule is set as follows: Appellants' brief and appendix or record excerpts – February 18, 1986; Appellees' brief – March 20, 1986; and Appellants' reply brief, if any – April 3, 1986. Based upon the foregoing briefing schedule, the Clerk shall include these cases in the pool of cases that are available for selection on this Court's September, 1986 calendar.

<b>DATE</b>	<b>FILINGS – PROCEEDINGS</b>
(C)02-14-86	4 – Appellants' consent motion to defer preparation of appendix pursuant to Federal Rule of Appellate Procedures 30(c) (p-14) [13]
(C)02-18-86	4 – BRIEF OF APPELLANTS THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, ET AL. (p-18) Bin 24-7
(E)03-05-86	Clerk's order granting appellant's motion to defer the filing of the appendix, and this Court's order of December 9, 1985 is revised as follows: Deferred appendix-April 10, 1986 and Final briefs of all parties – April 24, 1986.
(T)03-13-86	4 – Appellees' motion for leave to file a motion out of time for the enlargement of appellees' briefing time. (m-13) [13]
(E)03-24-86	Clerk's order granting appellees' motion to extend briefing time, and the briefing schedule is revised as follows: Appellees' brief – March 27, 1986; Appellant's reply brief, if any – April 10, 1986; Deferred appendix-April 17, 1986; Printed briefs – May 1, 1986. (Leave to file the instant motion is hereby granted.)
(E)03-24-86	4 – Appellees' motion to extend time – GRANTED (m-13)
(H)03-27-86	4 – Appellees' consent motion for leave to file motion out of time for enlargement of briefing time (m-27) (m-13)
(E)04-07-86	Clerk's order granting appellees' motion to extend briefing time, and the briefing

<b>DATE</b>	<b>FILINGS – PROCEEDINGS</b>
	schedule is revised as follows: Appellees' brief – April 3, 1986; Appellant's reply brief, if any – April 17, 1986; Deferred appendix – April 24, 1986; and Printed briefs – May 8, 1986. (Leave to file the instant motion is hereby granted. The Clerk is directed to file the lodged brief of appellees.)
(E)04-07-86	4 – Appellees' motion to enlarge time to file brief – GRANTED (m-27)
(E)04-07-86	15 – APPELLEES' BRIEF (p-3)
(E)04-14-86	4 – Appellants' motion for leave to file motion to extend time to file reply brief (p-4) [13]
(E)04-16-86	Clerk's order granting appellant's motion to extend briefing time, and the briefing schedule is revised as follows: Appellants' reply brief – April 24, 1986; Deferred appendix – May 1, 1986; and Printed briefs – May 15, 1986. (Leave to file the instant motion is hereby granted.)
(E)04-16-86	4 – Appellants' motion to enlarge the time to file reply brief – GRANTED (p-14)
(R)04-28-86	4 – Appellant's reply brief (m-24)
(T)05-01-86	7 – JOINT APPENDIX
(R)05-12-86	15 – APPELLEE'S BRIEF (m-7)
(E)05-15-86	15 – APPELLANTS' (REPORTERS CMTE) BRIEF (p-15)

## GENERAL DOCKET

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

85-6020

DATE	FILINGS – PROCEEDINGS
(E)05-15-86	15 – APPELLANTS' (REPORTERS CMTE.) REPLY BRIEF (p-15)
(J)09-23-86	CERTIFIED ORIGINAL RECORD – 3 volumes and 2 transcripts under 2 separate covers
(J)09-23-86	CERTIFIED ORIGINAL SUPPLEMENTAL RECORD – 1 envelope – UNDER SEAL IN VAULT
(J)09-24-86	Clerk's order, <i>sua sponte</i> , that the following times are allotted for oral argument: Appellants – 20 minutes; Appellees – 20 minutes.
(J)10-14-86	Per Curiam order that appellate jurisdiction properly lies in this case, by virtue of the District Court's determination, in the exercise of its sound discretion, to extend the period for filing a notice of appeal. FRAP 4(a)(1), (a)(5). Starr, Silberman, CJs and McGowan, SCJ.
(J)10-15-86	ARGUED before Starr, Silberman, CJs and McGowan, SCJ. (Bin 60-5)
(J)12-03-86	4 – Letter dated 12-02-86 from counsel for appellees advising of additional authorities pursuant to FRAP 28(j) (m-2) (25)

DATE	FILINGS – PROCEEDINGS
(J)12-15-86	4 – Letter dated 12-15-86 from counsel for appellants advising of additional authorities pursuant to FRAP 28(j) (m-15) (25)
(D)04-10-87	Opinion for the Court filed by Circuit Judge Silberman.
(D)04-10-87	Concurring opinion filed by Circuit Judge Starr.
(D)04-10-87	Judgment by this Court that the judgment of the District Court appealed from in these causes is hereby vacated and these cases are remanded, in accordance with the Opinion for the Court filed herein this date.
(D)04-10-87	Mandate order.
(R)04-23-87	5 – Appellant's bill of costs (m-23) [9]
(R)05-26-87	20 – Appellees' petition for rehearing and suggestion of rehearing en banc (p-26) [1]
(R)05-26-87	20 – Motion of Search Group, Inc., et al for leave to file a brief amicus curiae with respect to a petition for rehearing en banc (p-26) [1]
(J)07-02-87	Per Curiam order granting the motion of Search Group, Inc. for leave to file brief amicus curiae and the Clerk is directed to file the lodged brief and that appellants are directed to submit a brief of no more than twenty pages in reply to appellees' petition for rehearing and the brief of amicus curiae in support thereof, and do so on or before July 17, 1987. Starr, Silberman, CJs and McGowan, SCJ.



<b>DATE</b>	<b>FILINGS – PROCEEDINGS</b>
(J)07-02-87	20 – BRIEF OF SEARCH GROUP, INC. AS AMICUS CURIAE – per above order
(R)07-08-87	5 – Appellants' motion to enlarge the time within which to file a brief in reply to appellees' petition for rehearing (p-8) [1]
(J)07-24-87	Clerk's order granting appellants' motion to extend time to file brief in reply to appellees' petition for rehearing to and including July 24, 1987
(R)07-24-87	20 – Appellant's brief in response to appellee petition for rehearing and suggestion of rehearing en banc (m-24) [1]
(D)10-23-87	Opinion for the Court filed by Circuit Judge Silberman.
(D)10-23-87	Dissenting opinion filed by Circuit Judge Starr.
(J)10-23-87	Per Curiam order denying appellees' petition for rehearing for the reasons set forth in the above opinion. Starr, Silberman, CJs and McGowan, SCJ.
(R)11-04-87	20 – Appellees' motion for leave to file a supplementary memorandum in support of suggestion of rehearing en banc (m-4) [1]
(J)12-04-87	Per Curiam order denying appellees' motion for leave to file a supplementary memorandum in support of the suggestion for rehearing en banc. CJ Wald, Robinson, Mikva, Edwards, Ruth B. Ginsburg, Bork, Starr, Silberman, Buckley, Williams, D.H.

<b>DATE</b>	<b>FILINGS – PROCEEDINGS</b>
(J)12-04-87	Per Curiam order en banc denying appellees' suggestion for rehearing en banc. CJ Wald, Robinson, Mikva, Edwards, Ruth B. Ginsburg, Bork, Starr, Silberman, Buckley, Williams, D.H. Ginsburg and Sentelle, CJs. (A statement of Cir. Judge Starr, jointe by Cir. Judges Bork, Buckley and Sentelle is attached. Cir. Judge D.H. Ginsburg did not participate in this order
(R)12-11-87	5 – Appellees' motion to stay the mandate (m-11) [1]
(F)12-28-87	Per Curiam order that appellees' motion to stay mandate is granted and the Clerk is directed to withhold issuance of the court's mandate through Jan. 11, 1988. Starr and Silberman, CJs; McGowan, SCJ.
(R)01-05-88	5 – Appellees' motion to stay the mandate (m-5) [1]
(J)01-28-88	Per Curiam order granting appellees' motion to stay mandate and the Clerk is directed to withhold issuance of the mandate of the Court through February 10, 1988. Starr and Silberman, CJs.
(J)02-02-88	5 – Appellees' motion to stay mandate (m-2) (1)
(J)02-19-88	Per Curiam order that the Clerk is directed to withhold issuance of the court's mandate through February 22, 1988. Starr and Silberman, CJs.

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**DATE                      FILINGS – PROCEEDINGS**


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(R)02-26-88    Notice from Clerk, Supreme Court advising that petition for certiorari was filed in Supreme Court #87-1379 on 2-16-88 [1]

(R)04-20-88    Letter from Clerk, Supreme Court advising that petition for writ of certiorari in SC #87-1379 was granted on 04-18-88 [1]

**GENERAL DOCKET**

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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**85-6144**

**REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS,  
ET AL., APPELLANTS**

v.

**UNITED STATES DEPARTMENT OF JUSTICE, ET AL.**

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**APPEAL FROM THE DISTRICT COURT**

---

**COUNSEL: APPELLANT/PETITIONER****TYPE**

Kevin T. Baine 331-5517  
Williams and Connolly  
839-17th St., N.W. 20006  
Victoria Louise Radd

**COUNSEL: APPELLEE/RESPONDENT****TYPE**

US DOJ 20530  
John F. Daly 633-3688  
Leonard Schaitman 633-3441  
Civil Division, Rm. 3631

Popular Name:

Number of Case/Order Below: CA 79-03308

Case Type: CV.US.

JS-34: Yes ☒    No ☐

Judge Below: Penn (9055)



Date of Judg./Order: 07-25-85; 08-05-85 & 08-16-85  
 USDC Offense/Nature of Suit Code: 2895  
 Date Docketed: 11-29-85  
 Date Filed in Dist. Court: 12-07-79  
 Notice of Appeal Filed: 11-12-85 (purs. to 11-6-85 order)  
 U.S. Mag: ☐ Direct ☐ Indirect

**FINANCIAL**

USA IFP USDC RECEIPT

✓

**REMARKS**

85-6144

20-E's Supp Memo in Support of Sugg. of Rehear.  
 En Banc (11/04)

DATE	FILINGS – PROCEEDINGS
(B)11-29-85	Copy of notice of appeal and docket entries from Clerk, DC (n-2)
(B)11-29-85	Docketing fee was paid in the District Court on 11-12-85
(B)11-29-85	Docketing statement was mailed to counsel for appellants
(E)12-09-85	Clerk's order, sua sponte, that Nos. 85-6020 and 85-6144 are hereby consolidated. A briefing schedule is set as follows: Appellants' brief and appendix or record excerpts – February 18, 1986; Appellees' brief – March 20, 1986; and Appellants' reply brief, if any – April 3, 1986. Based upon the foregoing briefing schedule, the Clerk shall include these cases in the pool of cases that are available for selection on this Court's September, 1986 calendar.
(C)12-16-85	4 – Appellants' docketing statement (m-16) [15,23]
(C)02-14-86	4 – Appellants' consent motion to defer preparation of appendix pursuant to Federal Rule of Appellate Procedures 30(c) (p-14) [13]
(C)02-18-86	4 – BRIEF OF APPELLANTS THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, ET AL. (p-18).

<b>DATE</b>	<b>FILINGS – PROCEEDINGS</b>
(E)03-05-86	Clerk's order granting appellant's motion to defer the filing of the appendix, and this Court's order of December 9, 1985 is revised as follows: Deferred appendix – April 10, 1986 and Final briefs of all parties – April 24, 1986.
(T)03-13-86	4 – Appellees' motion for leave to file a motion out of time for the enlargement of appellees' briefing time. (m-13) [13]
(E)03-24-86	Clerk's order granting appellees' motion to extend briefing time, and the briefing schedule is revised as follows: Appellees' brief – March 27, 1986; Appellant's reply brief, if any – April 10, 1986; Deferred appendix – April 17, 1986; and Printed briefs – May 1, 1986. (Leave to file the instant motion is hereby granted.)
(E)03-24-86	4 – Appellees' motion to extend time – GRANTED (m-13)
(H)03-27-86	4 – Appellees' consent motion for leave to file motion out of time for enlargement of briefing time (m-27) [13]
(E)04-07-86	Clerk's order granting appellees' motion to extend briefing time, and the briefing schedule is revised as follows: Appellees' brief – April 3, 1986; Appellant's reply brief, if any – April 17, 1986; Deferred appendix – April 24, 1986; and Printed briefs – May 8, 1986. (Leave to file the instant motion is hereby granted. The Clerk is directed to file the lodged brief of appellees.)

<b>DATE</b>	<b>FILINGS – PROCEEDINGS</b>
(E)04-07-86	4 – Appellees' motion to enlarge time to file brief – GRANTED (m-27)
(E)04-07-86	15 – APPELLEES' BRIEF (p-3)
(E)04-14-86	4 – Appellants' motion for leave to file motion to extend time to file reply brief (p-14) [13]
(E)04-16-86	Clerk's order granting appellants' motion to extend briefing time, and the briefing schedule is revised as follows: Appellants' reply brief – April 24, 1986; Deferred appendix – May 1, 1986; and Printed briefs – May 15, 1986. (Leave to file the instant motion is hereby granted.)
(E)04-16-86	4 – Appellant's motion to enlarge the time to file reply brief – GRANTED (p-14)
(R)04-28-86	4 – Appellant's reply brief (m-24)
(T)05-01-86	7 – JOINT APPENDIX
(R)05-12-86	15 – APPELLEE'S BRIEF (m-7)
(E)05-15-86	15 – APPELLANTS' (REPORTERS CMTE) BRIEF (p-15)
(E)05-15-86	15 – APPELLANTS' (REPORTERS CMTE) REPLY BRIEF (p-15)
(J)09-23-86	CERTIFIED ORIGINAL RECORD – 3 volumes; and 2 transcripts under 2 separate covers
(J)09-23-86	CERTIFIED ORIGINAL SUPPLEMENTAL RECORD – 1 envelope – UNDER SEAL IN VAULT

## GENERAL DOCKET

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

85-6144

DATE	FILINGS – PROCEEDINGS
(J)09-24-86	Clerk's order, <i>sua sponte</i> , that the following times are allotted for oral argument Appellants – 20 minutes; Appellees – 20 minutes
(J)10-14-86	Per Curiam order that appellate jurisdiction properly lies in this case, by virtue of the District Court's determination, in the exercise of its sound discretion, to extend the period of filing a notice of appeal. F.R.A.P. 4(a)(1), (a)(5). Starr, Silberman, CJs and McGowan, SCJ.
(J)10-15-86	ARGUED before Starr, Silberman, CJs and McGowan, SCJ. (Bin60-5)
(J)12-03-86	4 – Letter dated 12-02-86 from counsel for appellees advising of additional authorities pursuant to FRAP 28(j) (m-2) (25)
(J)12-15-86	4 – Letter dated 12-15-86 from counsel for appellants advising of additional authorities pursuant to FRAP 28(j) (m-15) (25)
(D)04-10-87	Opinion for the Court filed by Circuit Judge Silberman.
(D)04-10-87	Concurring opinion filed by Circuit Judge Starr.

DATE	FILINGS – PROCEEDINGS
(D)04-10-87	Judgment by this Court that the judgment of the District Court appealed from in these causes is hereby vacated and these cases are remanded, in accordance with the Opinion for the Court filed herein this date.
(D)04-10-87	Mandate order.
(R)-4 = 23-87	5 – Appellant's bill of costs (m-23) [9]
(J)07-02-87	Per Curiam order granting the motion of Search Group, Inc. for leave to file brief amicus curiae and the Clerk is directed to file the lodged brief and that appellants are directed to submit a brief of no more than twenty pages in reply to appellees' petition for rehearing and the brief of amicus curiae in support thereof and do so on or before July 17, 1987. Starr, Silberman, CJs and McGowan, SCJ.
(J)07-02-87	20 – BRIEF OF SEARCH GROUP, INC. AS AMICUS CURIAE – per above order
(R)07-08-87	5 – Appellants' motion to enlarge the time within which to file a brief in reply to appellees' petition for rehearing (p-8) [1]
(J)07-24-87	Clerk's order granting appellants' motion to extend time to file brief in reply to appellees' petition for rehearing to and including July 24, 1987.
(R)07-24-87	20 – Appellant's brief in response to appellees' petition for rehearing and suggestion of rehearing en banc (m-24) [1]

<b>DATE</b>	<b>FILINGS – PROCEEDINGS</b>
(D)10-23-87	Opinion for the Court filed by Circuit Judge Silberman.
(D)10-23-87	Dissenting opinion filed by Circuit Judge Starr.
(J)10-23-87	Per Curiam order denying appellees' petition for rehearing for the reasons set forth in the above opinion. Starr, Silberman, CJs and McGowan, SCJ
(R)11-04-87	20 – Appellees' motion for leave to file a supplementary memorandum in support of suggestion of rehearing en banc (m-4) [1]
(J)12-04-87	Per Curiam order en banc denying appellees' suggestion for rehearing en banc. CJ Wald, Robinson, Mikva, Edwards, Ruth B. Ginsburg, Bork, Starr, Silberman, Buckley, Williams, D.H. Ginsburg and Sentelle, CJs. (A statement of Cir. Judge Starr, joined by Cir. Judges Bork, Buckley and Sentelle is attached. Cir. Judge D.H. Ginsburg did not participate in this order)
(J)12-04-87	Per Curiam order en banc denying appellees' motion for leave to file a supplementary memorandum in support of the suggestion for rehearing en banc. CJ Wald, Robinson, Mikva, Edwards, Ruth B. Ginsburg, Bork, Starr, Silberman, Buckley, Williams, D.H. Ginsburg and Sentelle, CJs.
(R)12-11-87	5 – Appellee's motion to stay the mandate (m-11) [1]

<b>DATE</b>	<b>FILINGS – PROCEEDINGS</b>
(F)12-28-87	Per Curiam order that appellees' motion to stay mandate is granted and the Clerk directed to withhold issuance of the Court's mandate through Jan. 11, 1988. Starr and Silberman, CJs; McGowan, SCJ
(J)01-28-88	Per Curiam order granting appellees' motion to stay mandate and the Clerk is directed to withhold issuance of the mandate of the Court through February 10, 1988. Starr and Silberman, CJs.
(J)02-02-88	5 – Appellees' motion to stay the mandate (m-2) (1)
(J)02-19-88	Per Curiam order that the Clerk is directed to withhold issuance of the mandate through February 22, 1988. Starr and Silberman, CJs.
(R)02-26-88	Notice from Clerk, Supreme Court advising that petition for certiorari was filed in Supreme Court #87-1379 on 2-16-88 [1]
(R)04-20-88	Letter from Clerk, Supreme Court advising that petition for writ of certiorari in SC #87-1379 was granted on 04-18-88 [1]



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 79-3308

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS  
Room 403  
1125 15th Street, N.W.  
Washington, D.C. 20005

and

ROBERT SCHAKNE  
c/o CBS News  
A Division of CBS, Inc.  
2020 M Street, N.W.  
Washington, D.C. 20036

PLAINTIFFS,

v.

UNITED STATES DEPARTMENT OF JUSTICE  
10th & Pennsylvania Aves., N.W.  
Washington, D.C. 20530

and

BENJAMIN R. CIVILETTI  
Attorney General  
United States Department of Justice  
10th & Pennsylvania Aves., N.W.  
Washington, D.C. 20530

and

FEDERAL BUREAU OF INVESTIGATION  
J. Edgar Hoover Building  
9th & Pennsylvania Aves., N.W.  
Washington, D.C. 20535

and

WILLIAM H. WEBSTER  
Director  
Federal Bureau of Investigation  
J. Edgar Hoover Building  
9th & Pennsylvania Aves., N.W.  
Washington, D.C. 20535

DEFENDANTS.

[Dec 7, 1979]

COMPLAINT FOR INJUNCTIVE RELIEF

JURISDICTION

1. This is an action challenging the policy of the Department of Justice and the Federal Bureau of Investigation of refusing to provide, under the Freedom of Information Act, public record criminal justice histories to the public and the press. Specifically, this is an action under the Freedom of Information Act, 5 U.S.C. §552, to compel defendants to produce certain records—namely, any records indicating any arrests, indictments, acquittals, convictions and sentences of Phillip Medico, Charles Medico, or Samuel Medico, by state, local or federal law enforcement agencies or courts. The information sought is limited to matters of public record.

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B).

PARTIES

3. Plaintiff THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS (hereinafter "The Reporters



Committee") is a voluntary, unincorporated association of working news reporters and editors dedicated to defending First Amendment and freedom of information interests of the public to know about the operation of all forms of government, through the press; the offices of The Reporters Committee are located in Washington, D.C.

4. Plaintiff ROBERT SCHAKNE is employed as a news correspondent by CBS News, a division of CBS, Inc., and sues in his individual capacity as a journalist.

5. Defendant UNITED STATES DEPARTMENT OF JUSTICE (hereinafter "Justice Department") is a department of the Executive Branch of the United States Government. It has possession or control of the records to which plaintiffs seek access. It is responsible, under its regulations, for reviewing appeals from denials by the Federal Bureau of Investigation for access to records pursuant to the Freedom of Information Act.

6. Defendant BENJAMIN R. CIVILETTI is the Attorney General of the United States; he is sued in his official capacity as custodian of the requested documents and as head of the agency in which the requested records are located.

7. Defendant FEDERAL BUREAU OF INVESTIGATION (hereinafter "F.B.I.") is an agency of the United States and has possession or control of the records to which plaintiffs seek access.

8. Defendant WILLIAM H. WEBSTER is the Director of the F.B.I. He is sued in his official capacity as custodian of the requested records and as head of the agency which initially denied plaintiffs' requests.

#### CAUSE OF ACTION

9. By letter dated February 3, 1978, a copy of which is attached as Exhibit 1, plaintiff Schakne requested that the

Justice Department provide access to the public record criminal justice histories of William Medico (deceased), Phillip Medico, Charles Medico, and Samuel Medico.

10. By letter dated April 4, 1978, a copy of which is attached as Exhibit 2, Robert L. Keuch, Deputy Assistant Attorney General, Criminal Division, Department of Justice, advised plaintiff Schakne that his request had been denied; Mr. Keuch alleged that the requested records were exempt from disclosure pursuant to 5 U.S.C. §552(b)(7)(B) and 5 U.S.C. §552(b)(7)(C).

11. By letter dated April 20, 1978, a copy of which is attached as Exhibit 3, plaintiff Schakne appealed the initial denial of his request by the Department of Justice, Criminal Division.

12. By letter dated April 27, 1978, a copy of which is attached as Exhibit 4, Allen H. McCreight, Chief Freedom of Information-Privacy Acts Branch, Records Management Division, Federal Bureau of Investigation, advised plaintiff Schakne that his request, which had been referred to the F.B.I., had been denied, and alleged that the requested records were exempt from disclosure pursuant to 5 U.S.C. §552(b)(7)(C) and the Privacy Act, 5 U.S.C. §552(a).

13. By letter dated May 5, 1978, a copy of which is attached as Exhibit 5, plaintiff Schakne appealed the initial denial of his request by the F.B.I.

14. By letter dated June 14, 1978, a copy of which is attached as Exhibit 6, Quinlan J. Shea, Jr., Director, Office of Privacy and Information Appeals, Department of Justice, advised plaintiff Schakne that the initial denials of his request had been modified and that the requested records relating to William Medico would be provided; Mr. Shea advised plaintiff Schakne that the denials of his request concerning Phillip Medico, Charles Medico, and Samuel Medico had been affirmed.

15. By letter dated October 2, 1978, a copy of which is attached as Exhibit 7, Robert E. Kent, Assistant Director, Identification Division, Federal Bureau of Investigation, provided the requested records relating to William Medico. The requested records relating to Phillip Medico, Charles Medico, and Samuel Medico have not been provided.

16. By letter dated September 21, 1978, a copy of which is attached as Exhibit 8, Jack C. Landau, acting on behalf of plaintiff The Reporters Committee, requested that the Justice Department provide access to the public record criminal justice histories of William Medico (deceased), Phillip Medico, Charles Medico, and Samuel Medico.

17. By letter dated October 30, 1978, a copy of which is attached as Exhibit 9, Allen H. McCreight, Chief Freedom of Information-Privacy Acts Branch, Records Management Division, Federal Bureau of Investigation, advised The Reporters Committee that its request relating to Phillip Medico, Charles Medico and Samuel Medico, which was referred to the F.B.I., had been denied. Mr. McCreight alleged that the requested records were exempt from disclosure pursuant to the Privacy Act, 5 U.S.C. §552(a).

18. By letter dated December 4, 1978, a copy of which is attached as Exhibit 10, plaintiff The Reporters Committee, appealed the initial denial of its request.

19. By letter dated January 15, 1979, a copy of which is attached as Exhibit 11, Quinlan J. Shea, Jr., Director, Office of Privacy and Information Appeals, Department of Justice, advised The Reporters Committee that the initial denial of its request had been affirmed. Mr. Shea alleged that the requested records were exempt from disclosure pursuant to 5 U.S.C. §552(b)(3) and 5 U.S.C. §552(b)(7)(C).

20. Plaintiffs have exhausted their administrative remedies.

21. Plaintiffs are entitled, pursuant to 5 U.S.C. § 552(a), to inspect and copy the requested records—namely, any records indicating any arrests, indictments, acquittals, convictions and sentences of Phillip Medico, Charles Medico, and Samuel Medico, by state, local or federal law enforcement agencies or courts. The information sought is limited to matters of public records.

WHEREFORE, plaintiffs pray that the Court (1) expedite the proceedings in this action, as provided under 5 U.S.C. § 552(a)(4)(D); (2) enjoin defendants, their agents, officers and employees from withholding the records which plaintiffs have requested and order defendants to produce the requested documents for inspection and copying; (3) award plaintiffs their costs and reasonable attorney's fees in this action, as provided under 5 U.S.C. § 552(a)(4)(E); and (4) grant such other and further relief as the Court may deem just and proper.

#### WILLIAMS & CONNOLLY

#### OF COUNSEL:

Jack C. Landau

The Reporters Committee  
for Freedom of the Press  
Room 403  
1125 15th Street, N.W.  
Washington, D.C. 20005

By: JOHN B. KUHNS

John B. Kuhns

By: LON S. BABBY

Lon S. Babby

Hill Building  
839 17th Street, N.W.  
Washington, D.C. 20006

Attorneys for Plaintiffs  
The Reporters Committee for  
Freedom of the Press and  
Robert Schakne

Dated: December 7, 1979

## EXHIBIT 1

## CBS NEWS

A Division of CBS, Inc.  
2020 M Street, NW  
Washington, D.C. 20036  
(202) 457-4321

February 3, 1978

Dear Sir:

Under the provisions of the Freedom of Information Act (5U.S.C. 552), I hereby request information from the Department of Justice regarding criminal records of William Medico (deceased), Phillip Medico, Charles Medico or Samuel Medico, specifically information about any prison sentences served in federal prisons, any convictions in federal courts, any indictments by federal grand juries or any arrests by federal law enforcement authorities; additionally information known to the Department of Justice about prison sentences, convictions, indictments or arrests by state or local courts and law enforcement agencies involving these four persons.

I call to your attention that the late William Medico was identified in 1970 by the Pennsylvania Crime Commission as having arrests and convictions on his record.

I look forward to your response within ten days.

Sincerely yours,

ROBERT SCHAKNE

Deputy Attorney General  
Room 4017  
Department of Justice  
10th and Pennsylvania NW  
Washington D.C.

## EXHIBIT 2

DEPARTMENT OF JUSTICE  
WASHINGTON 20530

FOI/CRM 3486

APR 4, 1978

Mr. Robert Schakne  
CBS News  
2020 M Street, N.W.  
Washington, D.C. 20036

Dear Mr. Schakne:

This is in response to your Freedom of Information Act request, dated February 3, 1978, for records pertaining to William Medico, Phillip Medico, Charles Medico and Samuel Medico.

Your request, as set forth in your February 3, 1978 letter, is hereby denied. Records relating to the subject matter of your request are exempt from disclosure pursuant to 5 U.S.C. 552(b)(7)(A) [investigatory records compiled for law enforcement purposes, the disclosure of which would interfere with enforcement proceedings]. These records are also exempt pursuant to 5 U.S.C. 552(b)(7)(B) [deprive a person of a right to a fair or an impartial adjudication] and 5 U.S.C. 552(b)(7)(C) [constitute an unwarranted invasion of personal privacy]. In addition, disclosure of this material would constitute a violation of the Privacy Act of 1974, and therefore, these records are also exempt pursuant to 5 U.S.C. 552(b)(3) [specifically exempted from disclosure by statute].

Pursuant to 5 U.S.C. § 552(a)(6)(A) and 28 C.F.R. § 16.7(a), you have a right to appeal this denial of your request. This appeal must be made within thirty days in writing and addressed to the Attorney General (Attention:



Office of Information and Privacy Act Appeals) Department of Justice, Washington, D.C. 20530. The envelope and letter should be clearly marked, "Freedom of Information Appeal" or "Information Appeal". If on appeal your request is denied, judicial review will thereafter be available to you in the district in which you reside or have your principal place of business or the district in which the records denied to you are situated or the District of Columbia.

Sincerely,

/s/ ROBERT L. KEUCH

Robert L. Keuch

Deputy Assistant Attorney General  
Criminal Division

### EXHIBIT 3

#### CBS NEWS

A Division of CBS, Inc.  
2020 M Street, NW  
Washington, D.C. 20036  
(202) 457-4321

#### FREEDOM OF INFORMATION APPEAL

April 20, 1978

Dear Sir:

Pursuant to 5 USC 552(a)(6)(A) and 28 CFR 16.7(a), I am hereby appealing the denial of my request for information under the Freedom of Information Act.

By letter of February 3, 1978, I filed a request under the Act for documents relating to "criminal records of William Medico . . . , Phillip Medico, Charles Medico or Samuel Medico . . ." The request specifically included documents relating to sentences, convictions, indictments and arrests in the federal system, as well as information as to local and state criminal records in the possession of the Department.

After a considerable delay, my request was denied in its entirety by a letter dated April 4. The grounds stated for the denial were that all of the documents fell within three categories of "investigatory records" exempt from disclosure under 5 USC 552(b)(7)(A), (b)(7)(B) and (b)(7)(C). Denial was also based on the assertion that "disclosure of this material would constitute a violation of the Privacy Act of 1974" and thus it was "specifically exempted from disclosure by statute" under 5 USC 552(b)(3). I submit that this blanket denial of my request should be reversed as a matter both of law and policy.

First, the use of the "investigatory records" exemptions to deny access to all of the requested documents is on its face inappropriate. For example, most, if not all, of the requested documents would be on the public record in the

jurisdiction in which the criminal justice procedures were invoked. Thus, even assuming that the information could generically be termed "investigatory records compiled for law enforcement purposes" (an assumption I believe to be unjustified), disclosure of such already public information could hardly "interfere with enforcement proceedings," "deprive a person of a right to a fair trial or an impartial adjudication," or "constitute an unwarranted invasion of personal privacy." The fact that the information may be more readily retrievable from the Justice Department makes it no less public in nature and certainly does not justify nondisclosure under the "investigatory records" exemption.

The Department also claims that the records are "specifically exempted from disclosure" by the Privacy Act and thus need not be disclosed under 5 USC 551(b)(3). This assertion that the Privacy Act is an "exemption 3 statute" is unique and puzzling. That Act provides in relevant part that information available to the individual to whom it pertains is not available to third parties unless disclosure is required under the Freedom of Information Act. Quite obviously, to deny access to information under the Freedom of Information Act because it is unavailable to third parties under the Privacy Act is improper and illogical.

Finally, denial of my request is inconsistent with the Department's own policy with regard to the type of information requested. For example, the 1976 revised regulations regarding release of criminal information by agencies receiving LEAA funds reversed the earlier position of the Department and provide no restrictions on the release of conviction data or other criminal history information in Court records of public proceedings. Further, arrest information and other nonconviction data was made largely

available. Under the circumstances, I submit it is incongruous for the Department to bar disclosure of such information in its own possession.

I look forward to your response within 20 days.

Yours truly,

/s/ ROBERT SCHAKNE

Robert Schakne  
CBS NEWS Correspondent

Attorney General  
Department of Justice  
Washington, D.C. 20530  
Attention: Office of Information and  
Privacy Act Appeals



## EXHIBIT 4

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C. 20535

April 27, 1978

Mr. Robert Schakne  
CBS News  
A Division of CBS, Inc.  
2020 M Street, N.W.  
Washington, D.C. 20036

Dear Mr. Schakne:

This is to acknowledge receipt by the FBI of your Freedom of Information-Privacy Acts request concerning Messrs. William Medico, Phillip Medico, Charles Medico and Samuel Medico. Your request was referred to the FBI by the Department of Justice.

Please be advised that any records which may pertain to your request are exempt from disclosure pursuant to the Freedom of Information Act, Title 5, United States Code, Section 552 (b)(7)(C). This allows the withholding of investigatory records compiled for law enforcement purposes, the disclosure of which would constitute an unwarranted invasion of the personal privacy of another person.

Also, Title 5, United States Code, Section 552a, popularly known as the Privacy Act, specifically Subsection (b) prohibits the release of personal information concerning a living person without that individual's written authorization. This decision is predicated upon a determination that there is insufficient public interest in the subject matter of your request to require release of personal records under the Freedom of Information Act.

If you disagree with this decision, you may appeal to the Attorney General. Appeals should be directed in writing to the Attorney General (Attention: Freedom of Information Appeals Unit), Washington, D.C. 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal."

Sincerely yours,

/s/ ALLEN H. MCCREIGHT

Allen H. McCreight, Chief  
Freedom of Information-  
Privacy Acts Branch  
Records Management Division

## EXHIBIT 5

## CBS NEWS

A Division of CBS, Inc.  
2020 M Street, NW  
Washington, D.C. 20036  
(202) 457-4321

## FREEDOM OF INFORMATION APPEAL

May 5, 1978

Dear Sir:

Pursuant to 5 USC 552(a)(6)(A) and 28 CFR 16.7(a), I hereby appeal the denial by the Federal Bureau of Investigation of my request for information under the Freedom of Information Act.

By letter dated April 4, Robert L. Keuch, Deputy Assistant Attorney General, denied in entirety a Freedom of Information request for documents pertaining to "criminal records of William Medico . . . , Phillip Medico, Charles Medico or Samuel Medico." By letter dated April 20, I filed a Freedom of Information Appeal of that denial.

Subsequently on April 27, I received a denial of my original request for information about the Medico's from the FBI, signed by Allen H. McCreight, on essentially the same grounds cited by the Department of Justice in the letter signed by Mr. Keuch.

I incorporate all the matters cited in my April 20 Freedom of Information Appeal in this appeal of the FBI denial. The information sought is the same, the denial is the same, and this appeal is the same: that this blanket denial of my request should be reversed as a matter of both law and policy.

I look forward to your response.

Yours truly,

/s/ ROBERT SCHAKNE

Robert Schakne  
CBS News Correspondent

Attorney General  
Department of Justice  
Washington, D.C. 20530  
Attention: Office of Information and  
Privacy Act Appeals

## EXHIBIT 6

UNITED STATES DEPARTMENT OF JUSTICE  
OFFICE OF THE DEPUTY ATTORNEY GENERAL  
WASHINGTON, D.C. 20530

JUN 14, 1978

Mr. Robert Schakne  
CBS News  
2020 M Street, N.W.  
Washington, D.C. 20036

Dear Mr. Schakne:

You requested the Department of Justice to provide to you information "regarding criminal records of William Medico (deceased), Philip Medico, Charles Medico or Samuel Medico." The Criminal Division denied this request in its entirety. The Federal Bureau of Investigation, to which the request was referred after some initial delay, has now also determined to deny the request completely. The Bureau of Prisons correctly responded that it could locate no pertinent records.

After careful consideration of this appeal, I have decided to modify the proposed action of the F.B.I. and to grant your request in part. As a general rule, requests for criminal record information on third parties are correctly answered, neither confirming nor denying that there are records, subject to reconsideration if the requester obtains the consent of the subjects. I am following this procedure as to Philip Medico, Charles Medico and Samuel Medico, unless you can provide me with either their notarized consent to release to you any materials which may exist, or submit further information to persuade me that the benefits to the general public that would flow from release would outweigh the right of these individuals to have their

personal privacy protected against clearly unwarranted or unwarranted invasion. As to William Medico, however, I am modifying the action of the F.B.I. Your assertion that he is dead is accepted, in reliance on 5 U.S.C. 552a(i)(3), which provides criminal sanctions for obtaining information on an individual through the use of false pretenses. A decedent's privacy interest disappears at his death. Release of material about a decedent can sometimes invade the personal privacy of his heirs to the requisite degree, but it is my judgment that disclosure of criminal record information about a deceased person would not ordinarily do so. Accordingly, after personally inspecting the document in question, I am requesting the Federal Bureau of Investigation to provide you with a copy of the "rap sheet" of William Medico.

If the Criminal Division has information in addition to that being released to you by the F.B.I., it is exempt from mandatory release either as compilation of material, the release of which would constitute a clearly unwarranted invasion of personal privacy, or as consisting of investigatory records compiled for law enforcement purposes, the release of which would constitute an unwarranted invasion of personal privacy. 5 U.S.C. 552(b)(6) and (7)(C). Whenever these exemptions are applicable, any discretionary release of information is prohibited by the Privacy Act of 1974. 5 U.S.C. 552a. Although this application of the Privacy Act is correct, its assertion as an "exemption 3 statute" is not. I have in the past and do again disapprove the attempted use of the Privacy Act as a statute justifying application of this exemption.

As to the action of the Bureau of Prisons, where there are no records there can be no denial of access, and where there has been no denial of access there can be no appeal.

I am acting on this appeal by designation of Attorney General Griffin B. Bell. Judicial review of my action is

available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, which is also where any Criminal Division and Federal Bureau of Investigation records within the scope of your request would be located.

Sincerely,

/s/ QUINLAN J. SHEA, JR.  
Quinlan J. Shea, Jr.  
Director  
Office of Privacy and  
Information Appeals

EXHIBIT 7

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C. 20537

October 2, 1978

Mr. Robert Schakne  
CBS News  
2020 M Street, N.W.  
Washington, D.C. 20036

Dear Mr. Schakne:

Reference is made to the letter from Mr. Quinlan J. Shea, Jr., Director, Office of Privacy and Information Appeals, United States Department of Justice, dated June 14, 1978, concerning your request for criminal records of Mr. William Medico and other individuals.

In accordance with Mr. Shea's instructions contained in his letter to you, I am enclosing a copy of Mr. Medico's criminal record as reflected in our identification files.

Sincerely yours,

/s/ ROBERT E. KENT  
Robert E. Kent  
Assistant Director  
Identification Division

Enclosure



FEDERAL BUREAU OF INVESTIGATION  
IDENTIFICATION DIVISION  
WASHINGTON, D.C. 20537

The following FBI record, NUMBER 376 599, is furnished FOR OFFICIAL USE ONLY. Information shown on this Identification Record represents data furnished FBI by fingerprint contributors. WHERE DISPOSITION IS NOT SHOWN OR FURTHER EXPLANATION OF CHARGE OR DISPOSITION IS DESIRED, COMMUNICATE WITH AGENCY CONTRIBUTING THOSE FINGERPRINTS.

CONTRIB. OF FINGERPRINTS	NAME AND NUMBER	ARREST. OR REC'D	CHARGE	DISPOSITION
SPol Wyoming PA	William Medico 1862	11-8-28	suspicion murder	rel
USM Scranton PA	Wm. Medico 743	2-3-31	vio Nat'l Prohibition Act	rel
PD Passaic NJ	William Medico 2305	2-8-34	disorderly person	90 das in Jail 60 das susp.
SO Paterson NJ	William Medico 2904	2-3-34	disorderly person	30 das Co Jail
SPol Wyoming PA	William Medico 3-B-2645	6-29-61	fugitive (aslt 2nd degree NY State)	ignored

DEAD: William Medico inf rec from FBI Philadelphia PA 7-13-73

EXHIBIT 8

THE REPORTERS COMMITTEE FOR FREEDOM  
OF THE PRESS  
LEGAL DEFENSE AND RESEARCH FUND  
Room 1112 • 1750 Pennsylvania Ave. NW  
Washington, DC 20006 • Tel. (202) 347-6888

September 21, 1978

William P. Tyson  
Acting Director  
Office of the Deputy Attorney General  
Executive Office for U.S. Attorneys  
Department of Justice  
Washington, D.C. 20530

Dear Mr. Tyson:

Under the provisions of the Freedom of Information Act (5 U.S.C. 552) I hereby request, on behalf of the Reporters Committee, information from the Department of Justice regarding the criminal records of William Medico (now deceased), Phillip Medico and Charles Medico, aka Samuel Medico.

I would like information about any arrest, indictment, acquittal, conviction and sentences in reference to the above-named individuals in either the state or federal systems.

I call to your attention that the late William Medico has been identified in 1970 by the Pennsylvania Crime Commission as having arrests and convictions on his record.

For purposes of this request, what is meant by "the Department of Justice" is primarily that building at Tenth and Pennsylvania Avenue and its affiliated offices in the District of Columbia with which I assume you may be familiar.

I offer you this definition of the Department of Justice in view of your somewhat ridiculous letter of July 7. If Ms. Schwed had wanted files and records from the offices of the United States Attorneys, she would have asked for them.

I can only hope, for other persons who may write to you, that you would initially assume a reasonable interpretation of the letter in an effort to help the public obtain information under the Freedom of Information Act rather than attempting to obstruct the implementation of the Act.

If I do not hear from you within ten days, I will assume this request has been denied and I remain,

Sincerely,

/s/ JACK C. LANDAU  
Jack C. Landau  
Director

EXHIBIT 9

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C. 20535

October 30, 1978

Mr. Jack C. Landau  
Room 1112  
1750 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Dear Mr. Landau:

This is in reference to your letter dated September 21, 1978, pertaining to William Medico, Phillip Medico and Charles Medico, which was referred to the Federal Bureau of Investigation (FBI) from the Department of Justice on October 16, 1978.

Based on the limited information you provided on William Medico, it is not possible to make an accurate search of our records. To insure an accurate search of our records, please furnish his complete name, date and place of birth, prior addresses, employments, and any specific data that would permit us to locate the documents you seek.

The following paragraphs pertain to your request for information concerning Phillip Medico and Charles Medico.

Please be advised that in handling requests concerning a third party, this Bureau is governed by Title 5, United States Code, Section 552a, popularly known as the Privacy Act, specifically Subsection (b), which prohibits the release of personal information concerning a living person without that individual's written authorization. To confirm or deny investigative interest in the individual you have identified as the subject of your request, would, of

itself, reveal personal information concerning a third person. This decision is predicated upon a determination that there is insufficient public interest in the subject matter of your request to require release of personal records under the Freedom of Information Act.

If you are dissatisfied with this determination, you may appeal the decision by following the instructions set forth below.

You have thirty days from receipt of this letter to appeal to the Deputy Attorney General from any denial contained herein. Appeals should be directed in writing to the Deputy Attorney General (Attention: Office of Privacy and Information Appeals), Washington, D.C. 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal."

If you obtain authorizations from Phillip Medico and Charles Medico, directing the release of information concerning themselves, to you, please have them notarized and submit the originals to this Bureau.

Along with the notarized authorizations, you should also furnish identifying data, such as Phillip Medico and Charles Medico's complete names and dates and places of birth, to insure an accurate search of our records.

Upon receipt of the above-mentioned notarized authorizations and identifying data, we will search the index to our central records and advise you of the results.

Sincerely yours,

/s/ ALLEN H. MCCREIGHT,  
Allen H. McCreight, Chief  
Freedom of Information-  
Privacy Acts Branch  
Records Management Division

# EXHIBIT 10

## THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

### LEGAL DEFENSE AND RESEARCH FUND

Room 1112 • 1750 Pennsylvania Ave. NW  
Washington, DC 20006 • Tel. (202) 347-6888

December 4, 1978

Benjamin R. Civiletti  
Deputy Attorney General  
of the United States  
Attention: Office of Privacy  
and Information Appeals  
Washington, D.C. 20530

*RE: Freedom of Information Appeal*

My Dear Mr. Deputy Attorney General:

I hereby appeal the finding by the FBI in the enclosed October 30 letter declining to provide me with information under the Freedom of Information Act of the arrests, indictments, convictions, acquittals and jail sentences imposed in federal or state courts on Phillip Medico and Charles Medico.

As all of these matters were at one time or continue to be matters of public record, I believe that the FBI has made an erroneous determination that republication of this matter would violate rights to privacy under the Privacy Act.

As the enclosed letter indicates, this appeal is being filed a few days later due to the Thanksgiving holidays and we hope you will waive the 30-day limitation.

Thanking you for your prompt attention, I remain,

Sincerely,

/s/ JACK C. LANDAU

Jack C. Landau  
Director

**EXHIBIT 11**

**UNITED STATES DEPARTMENT OF JUSTICE  
OFFICE OF THE ASSOCIATE ATTORNEY GENERAL  
WASHINGTON, D.C. 20530**

**JAN 15, 1979**

Mr. Jack C. Landau, Director  
The Reporters Committee for Freedom  
of the Press  
Legal Defense and Research Fund  
Room 1112  
1750 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Re: Appeal No. 8-2481

Dear Mr. Landau:

You appealed from the action of the Federal Bureau of Investigation on your request for access to the "rap sheets" of Philip and Charles Medico.

After careful consideration of your appeal, I have decided to affirm the initial action in this case. Individuals' rap sheets are not available to third parties pursuant to 5 U.S.C. 552(b)(3) and (7)(C). These pertain to material exempted from release by statute [28 U.S.C. 534(b)] and to investigatory records compiled for law enforcement purposes, the release of which would constitute an unwarranted invasion of the personal privacy of third parties. This information cannot be the subject of a discretionary release.

Judicial review of my action on this appeal is available to you in the United States District Court for the judicial district in which you reside or have your principal place of



business, or in the District of Columbia, which is also where the records you seek are located.

Sincerely,

Michael J. Egan  
Associate Attorney General

By: /s/ QUINLAN J. SHEA, JR.

Quinlan J. Shea, Jr.  
Director  
Office of Privacy and  
Information Appeals

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 79-3308

THE REPORTERS COMMITTEE FOR FREEDOM OF THE  
PRESS, ET AL., PLAINTIFFS,

vs.

UNITED STATES DEPARTMENT OF  
JUSTICE, ET AL., DEFENDANTS,

**AFFIDAVIT OF C. KENNETH ARNOLD**

I, C. Kenneth Arnold, being duly sworn, depose and say as follows.

1. I am a Special Agent of the Federal Bureau of Investigation (FBI) and have been so employed for twenty years.

2. I am currently assigned as the Section Chief of the Recording and Posting Sections, Identification Division, FBI, Washington, D.C., and have held that position since March 20, 1978.

3. The statements made herein are based upon my personal knowledge and information available to me in my official capacity.

4. The FBI Identification Division, which was established in 1924 by an Act of Congress, serves as the national repository and clearinghouse for fingerprint records. The authority to operate the Identification Division is found in Title 28, United States Code, Section 534, and Title 28, Code of Federal Regulations (CFR), Sections 0.85(b) and (j).

5. Acting under this authority, the Division has compiled and maintains a file consisting of more than 172,000,000 fingerprint cards. The fingerprint card file is divided into two sections, the Criminal File and the Civil File.

6. The Criminal File consists of:

(a) fingerprint cards submitted by Federal, state and local criminal justice agencies for persons arrested for violations of Federal and state laws; and

(b) incarceration fingerprint cards submitted for persons who are committed to custody after conviction of criminal violations.

The Criminal File contains over 78,000,000 fingerprint cards representing approximately 22,000,000 individuals. A name index, which consists of index cards bearing the name and other physical descriptive information (e.g., date of birth, race, height, and fingerprint classification) contained on each fingerprint card submitted to the Identification Division, is also maintained. The name index cards are filed separately by sex. There are approximately 70,000,000 name index cards which represent the names and aliases on fingerprint cards contained in the Criminal File.

7. The Civil File consists of fingerprint cards submitted by agencies of the United States Government for persons entering the military services, persons seeking employment with the United States Government, persons applying for visas to enter the United States, and aliens seeking permanent residence and/or citizenship. The Civil File is maintained separately from the Criminal File. The Civil File contains approximately 94,000,000 fingerprint cards representing approximately 43,000,000 persons. A name index, similar to that of the Criminal File, containing approximately 104,000,000 index cards, is also maintained.

8. An FBI identification record, often referred to as a "rap sheet," is a listing of fingerprints submitted to and retained by the FBI in connection with arrests and, in certain instances, fingerprints submitted in connection with employment, naturalization or military service. The identification record includes the name of the agency or institution which submitted the fingerprints to the FBI. If the fingerprints submitted to the FBI concern a criminal offense, the identification record includes the date arrested or received, arrest charge information and disposition data concerning the arrest if known to the FBI. All such data included in an identification record are obtained from the contributing local, state and Federal agencies. The FBI Identification Division is not the source of such data reflected on an identification record.

9. FBI identification records are established and maintained primarily for the benefit of the criminal justice community. Information from identification records is of value to these agencies for determining background information and the extent of an individual's prior arrest record. Criminal justice agencies also request copies of identification records during investigations to assist in identifying suspects. These records are furnished to judicial system officials for purposes of setting bail and imposing sentence. They are furnished to places of incarceration to determine the type and length of custody. Parole and probation officials use identification records when determining periods of supervision. A secondary purpose for which these records are maintained is to furnish them to authorized agencies to assist in the making of informed decisions concerning certain employment and license applications.

10. Fingerprint cards submitted by Federal agencies are the property of the United States Government and will

be removed from Identification Division files only upon receipt of a Federal court order directing such action.

11. The Identification Division serves as the custodian of fingerprint cards submitted voluntarily by non-Federal criminal justice agencies and will return any fingerprint card to the contributor upon its request. In such instances, it is not necessary that the non-Federal contributors furnish a court order directing the return of the fingerprint card.

12. The Identification Division has purging procedures approved by the Archivist of the United States which provide that criminal justice fingerprint cards are destroyed when the subject of the record becomes age 80 and civil fingerprint cards are destroyed when the subject of the record becomes age 75.

13. The Identification Division is prohibited from furnishing information from identification records to third party requesters except when authorized to do so by Federal statute. The following statutes provide authority for dissemination of identification records:

(a) Title 28, United States Code, Section 534, provides the authority for furnishing identification records to Federal, state and local criminal justice agencies for criminal justice purposes and to other agencies of the Federal Government for official purposes;

(b) Public Law 92-544, Section 201, 86 Stat. 1115, provides authority for the Identification Division to furnish identification records to federal chartered or insured banking institutions, and to state and local governments for purposes of employment and licensing when state law requires the checks and the state law is approved by the Attorney General;

(c) Public Law 94-29, Section 14(f)(2), 89 Stat. 97,140 provides authority for the Identification Division to con-

duct criminal record checks on persons employed in certain segments of the securities industry; and

(d) Public Law 95-405, Section 17, 92 Stat. 874, provides authority for the Identification Division to conduct criminal record checks on certain persons employed in the commodity futures trading industry.

If a third party request for an identification record cannot be accommodated under one of the statutes mentioned in this paragraph, the requester is advised that the Identification Division is without authority to honor the request.

14. It should be noted that although the FBI is prohibited from disseminating information from identification records to third parties, except as indicated above, the subject of an FBI identification record may obtain a copy of his/her identification record by complying with the provisions of Title 28, CFR, Section 16.32.

15. Additionally, it is emphasized that the Identification Division will not furnish records in response to non-Federal employment and licensing inquiries under the authority to Public Laws 92-544, 94-29, and 95-405 on the basis of "Name Check" requests. A "Name Check" is a search of the Identification Division's Criminal File name index based on the name and physical description furnished by the requester. Non-Federal employment and licensing requests will be honored only when the requester submits a fingerprint card for the applicant. This policy is premised on the fact that fingerprints provide a positive means of identification; and, because of the size of the Identification Division's Criminal File name card index, it is not possible to positively identify the applicant based upon name and physical description. Further, if a record possibly identical with the subject of the inquiry was furnished in response to a name check request, the recipient might not be able to determine if the record subject was in fact identical with the applicant. The information



necessary to resolve the question of identity is contained in the files of the criminal justice agency which furnished the record to the Identification Division. This agency may be prevented by statute or regulation from providing information from its files to non-Federal employment and licensing agencies and the requester would be unable to resolve the question of identity. A response to an employment and licensing inquiry based only upon name and physical descriptive information could result in substantial injury to the applicant if a record was located based on similar descriptive information but was in fact, not identical with the applicant. Also, without a fingerprint card search, it is not possible to locate an identification record if the individual was arrested under a name (e.g., an alias) different from that on the employment or licensing application.

16. Before an FBI identification record is disseminated for non-Federal employment and licensing purposes, it is reviewed and any entry more than one year old without a disposition is deleted. This policy is followed to reduce possible denials of employment opportunities or licensing privileges to individuals as a result of the dissemination of identification records not containing final dispositional data concerning criminal charges brought against such individuals. This policy is codified in Title 28, CFR, Sections 50.12(b) and 20.33(a)(3).

17. Responses to Federal, state, and local criminal justice agencies for criminal justice purposes and to agencies of the Federal Government for official purposes will be accepted on the basis of name checks. Any record furnished in reply contains a prominently placed admonition stating:

"Since neither fingerprints nor an identifying number which is indexed in our files accompanied your re-

quest, FBI cannot guarantee in any manner that this material concerns the individual in whom you are interested."

This caveat serves as a warning to the recipient that the record may or may not be identical with the subject of the inquiry and that the recipient should resolve this question before taking any action based upon the record.

Name check requests from criminal justice agencies and Federal agencies are honored because these agencies have the resources to resolve the question of identity. Criminal justice agencies have a nationwide telecommunications network over which inquiries may be made. Also, there is generally no prohibition against a criminal justice agency furnishing information from its files to a similar agency for criminal justice purposes. This access often provides the data necessary to resolve the question of identity. Additionally, criminal justice name check inquiries are made when seeking suspects, and individuals with similar names and descriptive information are pertinent to these inquiries. The Federal Government, because of its size, has similar resources at its disposal for resolving questions of identity.

The Identification Division limits the name searches it will conduct for Federal, state and local criminal justice agencies and agencies of the Federal Government. A name search will not be conducted if it is determined that the request is on a very common name unless a date of birth is furnished. Even when a date of birth is furnished, a search will not be conducted if it is determined that there is more than one file drawer of name index cards (1,200 cards) for that name. Further, if an attempt is made to conduct the search where only an approximate age is given, the search is terminated when it becomes obvious that there are numerous records possibly identical with the subject of the



search. At this point, the requester is advised that it will be necessary to furnish additional identifying data if a search is to be conducted.

/s/ C. KENNETH ARNOLD  
C. Kenneth Arnold  
Special Agent  
Federal Bureau of Investigation  
Washington, D.C.

Subscribed and sworn to before me this 21st day of April, 1980.

/s/ ANN LEE BALASSA  
Notary Public

My Commission expires 4-30-83

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 79-3308

THE REPORTERS' COMMITTEE FOR FREEDOM OF THE  
PRESS, ET AL., PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF  
JUSTICE, ET AL., DEFENDANTS

AFFIDAVIT OF DAVID H. COOK

I, David H. Cook, being duly sworn, depose and say as follows.

(1) I am a Special Agent (SA) of the Federal Bureau of Investigation (FBI) and have been so employed for 14 years.

(A) I am assigned in a supervisory capacity to the Freedom of Information-Privacy Acts (FOIPA) Branch, Records Management Division (RMD), FBI Headquarters (FBIHQ), Washington, D.C.

Due to the nature of my official duties, I am familiar with the procedures followed in processing Freedom of Information Act (FOIA) requests received at FBIHQ, and with plaintiffs' FOIA requests from having reviewed the correspondence pertaining thereto. I am, also, familiar with the various exemptions allowed under the FOIA wherein documents or portions thereof may be withheld from disclosure.

**Correspondence Relative to Plaintiff's FOIA Requests**

(2) The following are items of correspondence with plaintiffs:

**Request of Robert Schakne**

(A) By letter dated February 3, 1978, to the Deputy Attorney General (DAG), DOJ, Washington, D.C., plaintiff Robert Schakne requested, pursuant to the FOIA, information from the DOJ about federal and state prison sentences, convictions, indictments or arrests for William Medico (deceased), Phillip Medico, Charles Medico or Samuel Medico. (A true copy of this letter is attached hereto and made a part hereof as Exhibit A).

(B) By letter dated April 4, 1978, to Mr. Schakne, from Robert L. Keuch, Deputy Assistant Attorney General, Criminal Division, DOJ, Washington, D. C., Mr. Schakne's request was acknowledged. Mr. Schakne was advised that his request was denied, since records relating to the subject matter of his request are exempt from disclosure pursuant to Title 5, United States Code, Section 552 (b)(7)(A), (b)(7)(B), (b)(7)(C) and (b)(3). He was further advised of appeal procedures. (A true copy of this letter is attached hereto and made a part hereof as Exhibit B).

(C) By letter dated April 20, 1978, to the Attorney General (AG), DOJ, Washington, D. C., Mr. Schakne appealed the initial denial of his request by the Criminal Division of the DOJ. (A true copy of this letter is attached hereto and made a part hereof as Exhibit C).

(D) By letter dated April 27, 1978, to Mr. Schakne, from Allen H. McCreight, former Chief, FOIPA, RMD, FBIHQ, Washington, D. C., Mr. Schakne's FOIA request was acknowledged as having been referred to the FBI from the Criminal Division of the DOJ. Mr. Schakne was advised that any records which may pertain to his request

are exempt from disclosure pursuant to the FOIA, specifically Title 5, United States Code, Section 552, (b)(7)(C). He was also advised that Title 5, United States Code, Section 552a, popularly known as the Privacy Act, specifically Subsection (b), prohibits the release of personal information concerning a living individual without that individual's written authorization (subject to certain specified exceptions). He was further advised of appeal procedures. (A true copy of this letter is attached hereto and made a part hereof as Exhibit D).

(E) By letter dated May 5, 1978, to the AG, DOJ, Washington, D. C., Mr. Schakne appeals the denial by the FBI of his FOIA request. (A true copy of this letter is attached hereto and made a part hereof as Exhibit E.)

(F) By letter dated June 14, 1978, to Mr. Schakne, from Quinlan J. Shea, Jr., Director, Office of Privacy and Information Appeals, DOJ, Washington, D. C., Mr. Schakne was advised that Mr. Shea had affirmed the denial of records concerning Phillip Medico, Charles Medico and Samuel Medico. However, Mr. Shea indicated that he had modified the FBI's denial of records as they pertain to William Medico who is allegedly deceased, and that he had requested the FBI to provide a copy of the decedent's "rap sheet" to Mr. Schakne. Mr. Schakne was also advised of judicial review procedures. (A true copy of this letter is attached hereto and made a part hereof as Exhibit F).

(G) By letter dated October 2, 1978, to Mr. Schakne, from Robert E. Kent, Assistant Director (former), Identification Division, FBIHQ, Washington, D. C., Mr. Schakne was furnished a copy of the Identification Record ("rap sheet") of Mr. William Medico as reflected in the Identification Division files. (A true copy of this letter and the "rap sheet" of Mr. William Medico is attached hereto and made a part hereof as Exhibit G.)

**Request of Jack C. Landau on Behalf of Plaintiff  
Reporters' Committee for Freedom of the Press**

(H) By letter dated September 21, 1978, to William P. Tyson, Acting Director, Office of the Deputy Attorney General, Executive Office for U.S. Attorneys, Washington, D. C., Jack C. Landau, Director, Reporters' Committee for Freedom of the Press (Reporters' Committee), acting on behalf of plaintiff Reporters' Committee, requested, pursuant to the FOIA, criminal records of William Medico (now deceased), Phillip Medico and Charles Medico, aka Samuel Medico. Mr. Landau indicated that he would like "information about any arrest, indictment, acquittal, conviction and sentences in reference to the above-named individuals in either the state or federal systems." (A true copy of this letter is attached hereto and made a part hereof as Exhibit H).

(I) By letter dated October 30, 1978, to Mr. Landau, from Allen H. McCreight, former Chief, FOIPA Branch, RMD, FBIHQ, Washington, D. C., Mr. Landau's FOIA request was acknowledged as having been referred to the FBI from the DOJ. Mr. Landau was advised that based on the limited information he provided on William Medico, it was not possible to make an accurate search of our records. He was requested to furnish additional identifying data. Further, Mr. Landau was advised that notarized authorizations from Messieurs Phillip Medico and Charles Medico would be needed before we could begin processing his request, otherwise such information would be exempt from disclosure pursuant to Title 5, United States Code, Section 552a, popularly known as the Privacy Act, specifically Subsection (b), which prohibits the release of personal information without that individual's written authorization (subject to certain specified exceptions). (A true copy of this letter is attached hereto and made a part hereof as Exhibit I).

(J) By letter dated December 4, 1978, to Benjamin R. Civiletti, former DAG, Washington, D.C., Mr. Landau appealed the denial by the FBI of his FOIA request as to Phillip and Charles Medico. (A true copy of this letter is attached hereto and made a part hereof as Exhibit J).

(K) By letter dated January 15, 1979, to Mr. Landau, from Michael J. Egan, Associate Attorney General, by Quinlan J. Shea, Jr., Director, Office of Privacy and Information Appeals, DOJ, Washington, D. C., Mr. Landau was advised that his appeal of the initial action of the FBI denying his request for access to the "rap sheets" of Phillip and Charles Medico was affirmed pursuant to Title 5, United States Code, Section 552 (b)(3) and (b)(7)(C). He was also advised of judicial review procedures. (A true copy of this letter is attached hereto and made a part hereof as Exhibit K).

*(3) Explanation of FBI procedures when requests are made for Criminal Identification Records ("rap sheets") by individuals who are not the subjects thereof.*

(A) When a request is made under the FOIA to the FBI for criminal identification records ("rap sheets") by individuals who are not the subjects thereof ("third party requesters"), it is the FBI's policy to deny the FOIA request on the basis of Title 5, United States Code, Section 552 (b)(3). Title 5, United States Code, Section 552 (b)(3), provides for the withholding of information specifically exempted from disclosure by statute. Title 28, United States Code, Section 534 is the enabling statute for FBI's the Identification Division's compilation of criminal identification records ("rap sheets"). It is the FBI's position that when Title 28, United States Code, Section 534 was enacted, Congress only intended for identification records to be disseminated to authorized officials of specified governments and institutions, and not to individuals not specified



by statute. (See Affidavit of Special Agent C. Kenneth Arnold, which is filed herewith). Plaintiffs, therefore, have been denied the identification records, should any exist, regarding Phillip Medico, Charles Medico or Samuel Medico, pursuant to exemption (b)(3) of the FOIA, in view of Title 28, United States Code, Section 534.

(B) It is the FBI's position that if the Court should hold that Title 28, United States Code, Section 534 is not an exemption (b)(3) statute, the FBI would balance the privacy interests of the named individual(s) whose identification record is sought by a third party FOIA request against the public's interest in disclosure of the requested information under exemption (b)(6) of the FOIA. Title 5, United States Code, Section 552 (b)(6) exempts from release under the FOIA, personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Identification records are a compilation of arrest data and conviction data often from diverse geographical areas and over an extensive time-period. The information contained therein is often incomplete. The disclosure of this information, particularly with regard to reformed or rehabilitated individuals who may not have been notorious or whose notoriety may have diminished, could subject these individuals to unnecessary and unfounded public attention, harassment, criticism, and embarrassment. To disclose information contained in an individual's "rap sheet," or indeed the existence of the "rap sheet," to a member of the general public, could result in substantial injury to the individual's reputation. Information such as this, if revealed, could also subject individuals to repeated

intrusions into their private lives long after their misdeeds were uncovered.

/s/ DAVID H COOK  
 David H. Cook  
 Special Agent  
 Federal Bureau of Investigation  
 Washington, D.C.

Subscribed and sworn to before me this 18th day of April, 1980.

/s/ LEE ANN WOLESAGLE  
 Notary Public

My Commission expires April 30, 1984



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 79-3308

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS,  
ET AL., PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,  
DEFENDANTS

DECLARATION OF MELVIN D. MERCER, JR.

I, Melvin D. Mercer, Jr., being duly sworn, depose and say as follows:

(1) I am a Special Agent of the Federal Bureau of Investigation (FBI) and have been so employed for sixteen years.

(2) I am currently assigned as the Section Chief of the Recording and Posting Sections, Identification Division, FBI Headquarters (FBIHQ), Washington, D.C., and have held that position since January 12, 1981. I am familiar with the procedures followed in processing and responding to requests for information contained in the FBIHQ Identification Division Records System made pursuant to the Freedom of Information Act, Title 5, United States Code, Section 552, and the Privacy Act, Title 5, United States Code, Section 552a.

(3) The statements made herein are based upon my personal knowledge and information available to me in my official capacity. This Declaration has been prepared to answer in part this Court's Order of October 8, 1981,

in which the Court inquired with respect to "(1) the extent of the search made for the requested information[,] (2) the policy for the last ten years in handling requests for 'rap sheets' by other than law enforcement personnel, (3) the kinds of records which defendants are claiming to be exempt from discovery, and (4) a comprehensive statement setting forth any exceptions, other than those listed in the present affidavits, to the Section 552(b)(3) claim for exemption." This Declaration will respond for the Identification Division of FBIHQ to each of those inquiries, as supplemented by all other relevant and pertinent Affidavits filed in this matter. As fully described in ¶ 9 of this Declaration, because of the nature of the records requested by plaintiffs for individuals other than William Medico (*e.g.*, records concerning arrests, indictments, acquittals, convictions, or sentences), this Declaration constitutes the Government's submissions, consistent with the requirements of *Vaughn v. Rosen*, 159 US App DC 340 (1973), *cert. denied*, 414 US 977 (1974), as directed by this Court's Memorandum Order at page 3.

**The Policy For The Last Ten Years In Handling Requests For  
"Rap Sheets" By Other Than Law Enforcement Personnel**

(4) The FBI Identification Division maintains an FBI Identification Records System which serves as the national repository and clearinghouse for fingerprint records. The authority to operate the Identification Division Records System is found in Title 28, United States Code (U.S.C.), Section 534, and Title 28, Code of Federal Regulations (C.F.R.), Sections 0.85(b) and (j). As more fully explained in the April 21, 1980 Affidavit of C. Kenneth Arnold (filed in this matter as an exhibit to Defendants' Statement Of Points And Authorities In Support Of Motion For Summary Judgment), the FBI Identification Division Records System is the central repository for arrest and conviction

identification records—commonly referred to as “rap sheets”—which constitute listings of fingerprints submitted to and retained by the FBI in connection with the arrest, indictment, acquittal, conviction or sentencing of an individual. As fully explained in the Affidavit of C. Kenneth Arnold, no relevant or pertinent records other than rap sheets are located in the FBIHQ Identification Division Records System.<sup>1</sup>

(5) In accordance with the FBI Identification Division’s interpretation of Title 28, U.S.C., Section 534, between 1971 and September 24, 1973 it was the policy of the FBI not to release a rap sheet to any requestor other than law enforcement personnel at any time.<sup>2</sup> This prohibition included denial of a rap sheet’s release to even that person who was the subject of the rap sheet, unless such release was ordered by the Court.

(6) This policy of not releasing rap sheets to any requestor other than law enforcement personnel was continued until September 24, 1973. By order 556-73 dated

<sup>1</sup> As explained in the accompanying Affidavit of Anthony T. Riggio, Freedom of Information-Privacy Acts Section, Records Management Division, FBIHQ, rap sheets may also be located with other documents concerning an individual’s arrest, indictment, acquittal, conviction or sentencing in the FBIHQ Central Records System. The FBIHQ Central Records System is a separate records system maintained by the Records Management Division of the FBI and is distinct from the Identification Division Records System maintained by the Identification Division of the FBI.

<sup>2</sup> As more fully explained in the Affidavit of C. Kenneth Arnold, rap sheets may be released pursuant to federal law for certain licensing and employment purposes which are neither relevant here nor, as I understand this Court’s inquiry, contemplated by this Court’s Order. See also 28 C.F.R. Part 20, Subpart C. This Declaration is therefore limited to the policy for handling requests for “rap sheets” by third parties such as plaintiffs and under the circumstances requested by plaintiffs only.

September 24, 1973 (as amended in insignificant part on October 27, 1978), the Attorney General of the United States directed that the FBI publish rules for the dissemination of arrest and conviction identification records to the subjects of such records upon proper request. In accordance with Order 556-73, it is the policy of the FBI to release a copy of an identification record to the subject thereof upon submission to the Identification Division of (i) a written request by the subject, (ii) satisfactory proof of identity of the person whose record is requested—including the person’s name, date and place of birth, and set of rolled-in-inked fingerprint impressions—and, (iii) a processing fee of five dollars. See 28 C.F.R. § 20.34. (True copies of the original Order 556-73 as it was published in Volume 38, Number 228, page 32806 of the *Federal Register* on November 28, 1973, and the revised Order 556-73, published in Volume 43, Number 209, pages 50173-50174 of the *Federal Register* on October 27, 1978, are attached hereto and are made a part hereof as Exhibits A and B, respectively.)

**Any Exceptions, Other Than Those Listed In The Present Affidavits, To The Section 552(b)(3) Claim For Exemption**

(7) With regard to any additional exceptions for Title 5, U.S.C., Section 552(b)(3) releases, other than those listed in prior Affidavits filed with this Court, I am not aware of the release of FBIHQ identification records to third parties other than law enforcement personnel such as plaintiffs except for the instance described in the April 18, 1980 Affidavit of David H. Cook (filed in this matter as an exhibit to Defendants’ Statement Of Points And Authorities In Support Of Motion For Summary Judgment), which involves an individual named William Medico. In that instance, plaintiffs’ third party request to release the identification record of a person named William



Medico was originally refused. By letter dated June 14, 1978, from Quinlan J. Shea, Jr., Director, Office of Privacy and Information Appeals, Department of Justice, Washington, D.C., to third party requestor—Robert Schakne, however, Mr. Shea modified that initial denial of identification records as they pertain to a person named William Medico, who was alleged to be deceased. Mr. Shea directed that a copy of the rap sheet for an allegedly deceased person named William Medico be provided to Mr. Schakne. The release of the individual named William Medico's identification record to a third party requestor in compliance with Mr. Shea's June 14, 1978 decision is unique in that it is the only exception known to me where the FBI Identification Division's policy of not releasing identification records to third party requestors other than law enforcement personnel has not been followed. It is the policy of the FBIHQ Identification Division to continue to deny all such third party requests for the release of rap sheets, even in those instances where the purported subject of the rap sheet is known to be or is alleged to be deceased.

**The Extent Of The Search Made For The Requested Information,  
And The Kinds Of Records Which Defendants Are Claiming To  
Be Exempt From Discovery**

(8) With respect to the Court's inquiry regarding the extent of the search made for information requested by plaintiffs, I can only reiterate what has been previously stated in the April 21, 1980 Affidavit of C. Kenneth Arnold who preceded me in the capacity of Section Chief, Recording and Posting Sections, Identification Division, FBIHQ. At page 5 of that Affidavit, ¶ 15, Special Agent Arnold discussed the "name check" search procedures used by the Identification Division to locate identification records in the Identification Division Records System upon the receipt of a request for such records from

criminal justice and/or federal agencies. That same procedure was used to determine whether a rap sheet could be located for any individuals named William Medico, Phillip Medico, Charles Medico, or Samuel Medico. The result of the search of the name William Medico located one rap sheet which, as indicated in ¶ 7 of this Declaration, was released to plaintiffs at the direction of Mr. Shea.<sup>1</sup>

(9) I cannot state on the public record whether the above search of the Identification Division Records System did or did not locate any identification record(s) containing the information requested by plaintiffs as to Phillip Medico, Charles Medico or Samuel Medico. All I can state is that, if such identification record(s) did exist, it would not be discoverable, and it would be exempt from disclosure pursuant to Title 5, U.S.C., Section 552(b)(3), (b)(6), and (b)(7)(C). To even reveal on the public record the existence of any identification record or other document memorializing the type of information which plaintiffs seek—let alone to disclose the specific contents of any record which plaintiffs request—would publicly affirm that an individual had been the subject of arrest, indictment, acquittal, conviction, sentencing, or investigation interest, for whatever reason. Public acknowledgement of the mere existence of such a record could substantially

<sup>1</sup> It is the FBI's position that, based on the limited information provided by plaintiffs, *i.e.*, first and last name only, the FBI cannot state that this rap sheet is, in fact, the rap sheet of the William Medico with respect to whom plaintiffs purport to seek information. To ensure that the rap sheet provided to plaintiffs is absolutely responsive to their request, plaintiffs would have to provide the fingerprints of the individual named William Medico on which they seek a rap sheet, in addition to that person's full name and date and place of birth. This corroborating information, however, has not been provided with respect to any of the named individuals with respect to whom plaintiffs purport to seek records.

damage the reputation of that individual, hold that individual out to public scrutiny and ridicule resulting in likely embarrassment and personal discomfort, possibly occasion either direct or indirect economic loss with respect to employment, financial opportunities, licensing, education or other such concerns, invite the imposition of social stigma, and patently constitute a clearly unwarranted invasion of his or her personal privacy. These manifestly undesirable consequences are further compounded where, as here, it cannot be definitely established either (i) that the requested record in fact concerns the individual with respect to whom plaintiffs purport to seek such information for general public disclosure and without having shown a public necessity for such information, or (ii) that the requested record is either accurate or complete. Moreover, to deny the existence of the requested record(s) when there is none, but to refuse to either confirm or deny the existence of the requested record(s) where such record(s) exists, would constitute a course of action that itself reveals that such record(s) exists and would thereby also constitute a clearly unwarranted invasion of personal privacy. Therefore, it is the policy of the Records Management Division to neither confirm nor deny the existence of the requested records, with the unique exception of the instance involving a person named William Medico who is allegedly deceased. Any further information as to the existence or nonexistence of records containing the information sought by plaintiffs could reveal material that is exempt and, therefore, could only be provided *in camera*.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 18, 1981.

/s/ MELVIN D. MERCER, JR.  
 MELVIN D. MERCER, JR.  
 Special Agent  
 Federal Bureau of Investigation  
 Washington, D.C.



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 79-3308

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS,  
ET AL., PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,  
DEFENDANTS

DECLARATION OF ANTHONY T. RIGGIO

I, Anthony T. Riggio, being duly sworn, depose and say as follows:

(1) I am a Special Agent of the Federal Bureau of Investigation (FBI) and have been so employed for eight years. I am currently assigned in a supervisory capacity in the Freedom of Information-Privacy Acts (FOIPA) Section, Records Management Division, FBI Headquarters (FBIHQ), Washington, D.C., and have held that position for two years. I am familiar with the procedures followed in processing requests for information contained in the FBIHQ Records Management Division Central Records System made pursuant to the Freedom of Information Act, Title 5, United States Code, Section 552, and the Privacy Act, Title 5, United States Code, 552a. I was recently assigned to supervise the FOIPA requests of plaintiffs and am familiar with the procedures used to process and respond to those requests.

(2) The statements made herein are based upon my personal knowledge and information available to me in my official capacity. This Affidavit has been prepared to

answer in part this Court's Order of October 8, 1981, in which the Court inquired with respect to "(1) the extent of the search made for the requested information . . . , (3) the kinds of records which defendants are claiming to be exempt from discovery, and (4) a comprehensive statement setting forth any exceptions, other than those listed in the present affidavits, to the Section 552(b)(3) claim for exemption." This Affidavit will respond for the Records Management Division of FBIHQ to each of those inquiries, as supplemented by all other relevant and pertinent Affidavits filed in this matter. As fully explained in ¶ 6 of this Declaration, because of the nature of the records requested by plaintiffs for individuals other than William Medico (e.g., records concerning arrests, indictments, acquittals, convictions, or sentences), this Declaration constitutes the Government's submission, consistent with the requirements of *Vaughn v. Rosen*, 157 US App. DC 340 (1973), *cert. denied*, 415 US 977 (1974), as directed by this Court's Memorandum Order of October 8, 1981 at page 3.

**The Extent Of The Search Made For The Requested Information,  
And The Nature And Description Of The Documents Being Withheld**

(3) As explained in the accompanying Affidavit of Special Agent Melvin D. Mercer, Jr., of the FBIHQ Identification Division, the initial search for the requested information was limited to a search of the FBIHQ Identification Division Records System for two reasons. First, plaintiffs' request was deemed to be for criminal identification records only, i.e., "rap sheets." Second, plaintiffs did not provide the additional necessary identifying information (e.g., fingerprints, dates and places of birth, prior addresses, employments, notarized consent of the subject to such release, etc.) required to undertake a further search for other identifiable information concerning the pur-

ported subjects of their request in the Central Records System which includes, but is not limited to, rap sheets. This initial search of the Identification Records System disclosed the existence of a rap sheet for an allegedly deceased individual named William Medico; that rap sheet has already been provided to plaintiffs.

(4) Pursuant to this Court's October 8, 1981 Order, an additional, expanded search of the Central Records System under the control of the Records Management Division was conducted under the names William Medico, Charles Medico, Phillip Medico and Samuel Medico.<sup>1</sup> The Central Records System is separate and distinct from the Identification Division Records System described in the accompanying Declaration of Melvin D. Mercer, Jr. In contrast to the Identification Division Records System, which maintains only rap sheets, the Central Records System maintains other records pertaining, *e.g.*, to the ar-

<sup>1</sup> The Central Records System enables the FBI to maintain, in one centralized location, all pertinent information in the possession of the FBI deemed worthy of retention which has been acquired in the course of fulfilling its investigative responsibilities. The Central Records System at FBIHQ is the primary records system maintained by the FBI. The FBI Central Records System contains administrative, applicant, personnel, and investigative files compiled for law enforcement purposes. This system consists of a numerical sequence of files broken-down according to subject matter. The subject matter of a file may relate to an individual, organization, company, publication, or foreign intelligence activity. Communications originating at FBIHQ and those received from FBI Field Offices and sources outside the FBI are directed to the Records Management Division at FBIHQ for entry into the appropriate Central Records System file. It should be noted that rap sheets may or may not be included in the Central Records System. However, if a particular individual's rap sheet exists, it would be maintained within the FBIHQ Identification Division Records System.

rest, indictment, acquittal, conviction or sentencing of an individual, including, but not limited to, rap sheets.<sup>2</sup>

(5) A search of the active index to the general indices of the Central Records System under the name William Medico disclosed one "see reference" document pertaining in part to an individual of that name which relates to plaintiffs' request concerning any arrests, indictments, acquittals, convictions or sentences for an individual of that name.<sup>3</sup> The arrest, indictment, and sentencing informa-

<sup>2</sup> The FBI also maintains two additional records systems which reflect investigative activity. These systems are the National Crime Information Center (NCIC) system and the Electronic Surveillance (ELSUR) Indices. The NCIC is a computerized record system composed of nine separate files. Only one of those files, the Computerized Criminal History (CCH) files, would contain information of the type requested by plaintiffs. However, the CCH files have not been searched since they are based on and are redundant of the FBIHQ Identification Division Records System rap sheet information which has been searched. The ELSUR Indices is an index card system located at FBIHQ consisting of 3" x 5" index cards on which are maintained: (1) the name of each person monitored or the proprietor of the premises on which an electronic surveillance was conducted by the FBI since January 1, 1960, and (2) a source number to identify the electronic surveillance, the date the conversation occurred, the location of the field office which conducted the monitoring, and the address and/or telephone number where the electronic surveillance occurred. These index cards would not reflect information of the type requested by plaintiffs, and a search of the ELSUR Indices would therefore not be either pertinent or relevant to plaintiffs' request.

<sup>3</sup> Access to the Central Records System is provided by a general indices, arranged in alphabetical order, consisting of approximately 60 million index cards on various subject matters, including names of individuals. The index cards in the general indices fall into two general categories: "main" index cards and "see" (*i.e.*, cross-reference) index cards. A "main" index card contains the name of an individual, organization, activity, or other title, which is the principal subject of a file maintained in the Central Records System (*i.e.*, a known subject,



tion contained in that one "see reference" document is confined to two paragraphs on page 15 of that 38-page document dated September 15, 1958. The arrest, indictment, and sentencing information contained therein was compared with the already-released identification record for the allegedly deceased individual named William Medico. Based on that comparison, I believe that the information in these two relevant paragraphs on page 15 of that 38-page document pertains to the same allegedly deceased individual named William Medico who is the assumed subject of the identification record already released to plaintiffs. Therefore, these two paragraphs are being released

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suspect or victim). A "see" index card bears the name of an individual, organization, or activity, which is referred to in, but is not the main subject of, a file contained in the Central Records System. A "main" index card is automatically prepared at the time the FBI becomes involved in the investigation of a possible violation of federal law within its investigative jurisdiction. At that time, the names of known subject(s), suspect(s), or victim(s), are set forth in case-caption and subsequently indexed in the "main" file. The decision to further index the names of additional subjects, and/or other names or information appearing on a document, for "see" references is made by the investigative Agent in a field office and the supervising Agent at FBIHQ.

The general indices is comprised of an active index and an inactive index. While a search has been completed of the "active index" as described in this Declaration, a search of the "inactive index" of the general indices of the Central Records System has not been completed. The Records Management Division is presently endeavoring to expeditiously complete its search of the inactive index to ensure that a full and complete search for the records sought by plaintiffs—including but not limited to rap sheets—is undertaken and to fully satisfy this Court's Order. The Government has therefore concurrently sought leave of this Court to enlarge the time period for complying with this Court's Order, in further part, so that such search may be completed and a Supplemental Declaration(s) may be filed, if necessary.

with this Declaration as Exhibit A consistent with the prior release of the above-mentioned rap sheet of an individual named William Medico. Since no other information found on page 15, or any other page of that 38-page document pertains to the arrest, indictment, acquittal, conviction or sentencing of the individual named William Medico, the other information on those pages has been deemed not pertinent to plaintiffs' request and, therefore, is not addressed further by this Declaration.

(6) I cannot state on the public record whether the above search of the active index to the general indices of the Central Records System did or did not locate any record—including, but not limited to, rap sheets—containing the information requested by plaintiffs, regarding the individuals named by plaintiffs other than the allegedly deceased individual named William Medico whose rap sheet and other pertinent information discussed in ¶ 5 of this Declaration has already been provided to plaintiffs. All I can state is that, if such requested information did exist, it would not be discoverable, and it would be exempt from disclosure pursuant to Title 5, U.S.C., Section 552(b)(3), (b)(6), and (b)(7)(C). To even reveal on the public record the existence of any identification record or other document memorializing the type of information which plaintiffs seek—let alone to disclose the specific contents of any record which plaintiffs request—would publicly affirm that an individual had been the subject of arrest, indictment, acquittal, conviction, sentencing, or investigative interest, for whatever reason. Public acknowledgement of the mere existence of such a record could substantially damage the reputation of that individual, hold that individual out to public scrutiny and ridicule resulting in likely embarrassment and personal discomfort, possibly occasion either direct or indirect economic

loss with respect to employment, financial opportunities, licensing, education or other such concerns, invite the imposition of social stigma, and patently constitute a clearly unwarranted invasion of his or her personal privacy. These manifestly undesirable consequences are further compounded where, as here, it cannot be definitely established either (i) that the requested record in fact concerns the individual with respect to whom plaintiffs purport to seek such information for general public disclosure and without having shown a public necessity for such information, or (ii) that the requested record is either accurate or complete. Moreover, to deny the existence of the requested record(s) when there is none, but to refuse to either confirm or deny the existence of the requested record(s) where such record(s) exists, would constitute a course of action that itself reveals that such record(s) exists and would thereby also constitute a clearly unwarranted invasion of personal privacy. Therefore, it is the policy of the Records Management Division to neither confirm nor deny the existence of the requested records, with the unique exception of the instance involving a person named William Medico who is allegedly deceased. Any further information as to the existence or nonexistence of records containing the information sought by plaintiffs could reveal material that is exempt and, therefore, could only be provided *in camera*.

**The Kinds Of Records Which Defendants Are Claiming To Be Exempt From Discovery**

(7) This Court has further requested that it be advised of the kinds of records which are claimed to be exempt from discovery. As more fully explained in ¶ 6 of this Declaration, I can only state on the public record that, with the exception of the records pertaining to the individual

named William Medico, any such record, or any information in any form of the kind requested by plaintiffs, whether located in the Central Records System, the Identification Division Records System or otherwise, would not be discoverable and would be exempt from disclosure.

**Any Exceptions, Other Than Those Listed In The Present Affidavits, To The Section 552(b)(3) Claim For Exemption**

(8) With respect to this Court's inquiry regarding the FBI's reliance on any exceptions to the Title 5, U.S.C., Section 552(b)(3) claim for exemption, other than those listed in the Affidavits previously filed with this Court, I wish to reiterate the statements found in the April 18, 1980 Affidavit of David H. Cook (filed in this matter as an exhibit to Defendants' Statement Of Points And Authorities In Support Of Motion For Summary Judgment) that any records containing the information which plaintiffs seek — should they exist — regarding Phillip Medico, Charles Medico, or Samuel Medico, would be exempt from disclosure pursuant to Title 5, U.S.C., Section 552(b)(3) and (b)(6). In addition, I wish to advise the Court that an exemption would also be claimed pursuant to Title 5, U.S.C., Section 552(b)(7)(C). With regard to the assertion of exemption (b)(7)(C) in this instance, if exemption (b)(3) is determined by this Court not to be applicable, as with exemption (b)(6) the FBI would balance the privacy interests of that individual on whom the requested information is sought against the public's interest in disclosure of that information if it exists. The justification for assertion of the (b)(7)(C) exemption in this matter is the same as that provided for the (b)(6) exemption discussed on pages 6 and 7 of the Affidavit of David H. Cook. The type of information sought by plaintiffs would, if released, be as easily an "unwarranted" invasion of privacy as a "clearly unwar-



ranted" invasion of privacy and should therefore be exempt from disclosure, if such information exists.

(9) As more fully explained in the accompanying Declaration of Melvin D. Mercer, Jr., I am not aware of the release to third party requestors such as plaintiffs of FBIHQ identification records, or any information in any form of the kind requesting by plaintiffs, except for the instance involving the release to plaintiffs of a rap sheet for an allegedly deceased individual named William Medico as directed by Mr. Shea. Furthermore, it is only because of this limited and unique exception that the information contained in the attached Exhibit A to this Declaration is being released to plaintiffs herewith.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 18, 1981.

/s/ ANTHONY T. RIGGIO  
 ANTHONY T. RIGGIO  
 Special Agent  
 Federal Bureau of Investigation  
 Washington, D.C.

# **RIGGIO EXHIBIT A**

WILLIAM MEDICO was arrested in 1931 for violation of U.S. Probation laws and served time for this in the Luzerne County Jail, Wilkes-Barre, Pa.

In 1935 he was arrested in New Jersey in what has been described as a raid on a gambling establishment and served time for this also. His last arrest in 1947 by the Pennsylvania Liquor Control Board for purchasing liquor, using the name of a club in Pittston, Pa., as the purchaser, and for possession of liquor on which the Pennsylvania tax had not been paid. The Grand Jury did not indict him on these charges.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 79-3308

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS,  
ET AL., PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,  
DEFENDANTS

AFFIDAVIT OF ROBERT SCHAKNE

I, ROBERT SCHAKNE, having been duly sworn, do hereby depose, under penalty of perjury, as follows:

1. I am a news correspondent employed by CBS News, a division of CBS, Inc., and a plaintiff in this action.
2. I make this affidavit in support of Plaintiffs' Motion for Summary Judgment filed herein.
3. I have read the accompanying Statement of Material Facts As To Which There Is No Genuine Dispute.
4. All the facts recited therein are true and correct to the best of my knowledge and belief.

/s/ ROBERT SCHAKNE  
Robert Schakne

Subscribed to and sworn to before me  
this 31 day of January, 1983.

/s/ [sig illegible]  
Notary Public

My commission expires November 30, 1983

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 79-3308

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS,  
ET AL., PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,  
DEFENDANTS

AFFIDAVIT OF JACK C. LANDAU

I, JACK C. LANDAU, having been duly sworn, do hereby depose, under penalty of perjury, as follows:

1. I am a director of the Reporters Committee for Freedom of The Press, a plaintiff in this action.
2. I make this affidavit in support of Plaintiffs' Motion for Summary Judgment filed herein.
3. I have read the accompanying Statement Of Material Facts As To Which There Is No Genuine Dispute.
4. All the facts recited therein are true and correct to the best of my knowledge and belief.

/s/ JACK C. LANDAU  
Jack C. Landau

Subscribed to and sworn to before me  
this 3rd day of February, 1983.

/s/ DIANE BINGHAM  
Notary Public

My commission expires March 31, 1983

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 79-3308

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS,  
ET AL., PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,  
DEFENDANTS

STATEMENT OF MATERIAL FACTS AS TO WHICH  
THERE IS NO GENUINE DISPUTE

1. Plaintiff the Reporters Committee for Freedom of the Press (hereinafter "The Reporters Committee") is a voluntary unincorporated association of working news reporters and editors dedicated to defending First Amendment and freedom of information interests of the public.

2. Plaintiff Robert Schakne is a news correspondent employed by CBS News, a division of CBS, Inc.

3. In January, 1978, there were several published reports that the U.S. Attorney in Philadelphia, David Marston, was investigating two Democratic Congressmen from Pennsylvania, Joshua Eilberg and Daniel Flood, for alleged conflict of interest and corruption.

4. CBS News assigned plaintiff Schakne, a correspondent in its investigative unit, to investigate the allegations about Congressman Daniel Flood.

5. Congressman Flood at the time was a senior member of the House of Representatives and Chairman of the House Appropriations Subcommittee.

6. In the course of Mr. Schakne's investigation, he learned that Congressman Flood had been instrumental in arranging certain Defense Department contracts for Medico Industries.

7. Mr. Schakne also learned that William Medico, General Manager of Medico Industries, had been identified by the federal Bureau of Narcotics and the Pennsylvania Crime Commission as a "criminal associate" of organized crime leader Russel Bufalino.

8. The Pennsylvania Crime Commission report also stated that William Medico had a criminal record which included "arrests for suspicion of murder and assault, and convictions for bootlegging and disorderly conduct."

9. The Pennsylvania Crime Commission report listed Medico Industries as one of a number of "legitimate businesses dominated by organized crime figures [which] have received a number of lucrative public contracts."

10. Because of the great public interest in the investigation of Congressman Flood, and the potential newsworthiness of the relationship of an allegedly corrupt congressman to a business reportedly dominated by organized crime, Mr. Schakne sought further information about the principals behind Medico Industries, *i.e.*, the Medico family.

11. Plaintiff Schakne believed that the newsworthiness and relevance of the connection between Congress Flood and the Medicos would depend, in part, on the type of criminal record possessed by the Medicos. For example, a record of bribery, embezzlement or other financial crime by any of the principals of Medico Industries would potentially be a matter of great public interest since the company was receiving millions of dollars of federal funds.

12. Mr. Schakne, therefore, obtained the names of the principals of Medico Industries from Standard and Poor's Directory and orally requested information about their



public record criminal justice history from Justice Department press officer, Robert Stevenson.

13. Mr. Stevenson denied Mr. Schakne the requested information and advised him to file a formal FOIA request.

14. By letter dated February 3, 1978 (attached hereto as Exhibit 1), plaintiff Schakne, pursuant to the Freedom of Information Act, requested of the Department of Justice "information . . . regarding the criminal records of William Medico (deceased), Phillips Medico, Charles Medico or Samuel Medico." The letter specifically pointed out that William Medico had been identified by the Pennsylvania Crime Commission as having arrests and convictions on his record.

15. By letter dated April 4, 1978 (attached hereto as Exhibit 2), Robert L. Keuch, Deputy Assistant Attorney General, advised plaintiff Schakne that his request had been denied in its entirety on the ground that the information sought is exempt from disclosure pursuant to exemptions 7(A), 7(B), and 7(C) of the Freedom of Information Act and pursuant to the Privacy Act as incorporated by exemption 3 of the FOIA.

16. By letter dated April 20, 1978 (attached hereto as Exhibit 3), plaintiff Schakne appealed this initial denial of his request.

17. By letter dated April 27, 1978 (attached hereto as Exhibit 4), Allen H. McCreight, Chief, Freedom of Information—Privacy Acts Branch, Records Management Division, Federal Bureau of Investigation, advised plaintiff Schakne that his request, which had been referred to the F.B.I., had been denied in its entirety on the ground that the information sought is exempt from disclosure pursuant to exemption 7(C) of the FOIA and the Privacy Act.

18. By letter dated May 5, 1978 (attached hereto as Exhibit 5), plaintiff Schakne appealed this initial denial of his request by the F.B.I.

19. By letter dated June 14, 1978 (attached hereto as Exhibit 6), Quinlan J. Shea, Jr., Director, Office of Privacy and Information Appeals, Department of Justice, advised plaintiff Schakne that the initial denials of his request had been modified and that records relating to William Medico would be provided. Mr. Shea further advised plaintiff Schakne that the denials of his request as it related to Phillip, Charles, and/or Samuel Medico had been affirmed on the ground that the information is exempt from disclosure pursuant to exemptions 6 and 7(C) of the FOIA. Mr. Shea specifically declined to rely on exemption 3, stating his disapproval of the use of the Privacy Act as an exemption 3 statute.

20. On October 2, 1978, the F.B.I. provided plaintiff Schakne with a copy of the criminal identification record (*i.e.*, "rap sheet") of William Medico.

21. By letter dated September 21, 1978 (attached hereto as Exhibit 7), Jack C. Landau, on behalf of The Reporters Committee, requested of the Department of Justice "information . . . regarding the criminal records" of William Medico (deceased), Phillip Medico, Charles Medico, and/or Samuel Medico. The letter specifically pointed out that William Medico had been identified by the Pennsylvania Crime Commission as having arrests and convictions on his record.

22. By letter dated October 30, 1978 (attached hereto as Exhibit 8), Allen H. McCreight, Chief, Freedom of Information—Privacy Acts Branch, Records Management Division, Federal Bureau of Investigation, advised The Reporters Committee that its request relating to Philip, Charles and/or Samuel Medico, which had been referred to the F.B.I., had been denied on the ground that the in-



formation sought is exempt from disclosure pursuant to the Privacy Act.

23. By letter dated December 4, 1978 (attached hereto as Exhibit 9), plaintiff The Reporters Committee appealed this initial denial of its request.

24. By letter dated January 15, 1979 (attached hereto as Exhibit 10), Quinlan, J. Shea, Jr., Director, Office of Privacy and Information Appeals, Department of Justice, advised The Reporters Committee that the initial denial of its request had been affirmed on the ground that the information sought is exempt from disclosure pursuant to 28 U.S.C. § 534(b) as incorporated by FOIA exemption 3, and exemption 7(C) of the FOIA.

25. By letter dated March 13, 1979 (attached hereto as Exhibit 11), Attorney General Griffin Bell, in response to inquiries from CBS News, wrote to Mr. Fred Graham at CBS News (with a copy to plaintiff Schakne) to explain the "Department's policy with regard to releasing individual criminal history records under the Freedom of Information Act." Attorney General Bell explained that after "a thorough review" of the Department's "policy and practice" it was "unanimously concluded that FOIA requests for an individual's criminal records might well result in the release of voluminous material, but that we are prohibited by statute and case law from releasing certain records which may be contained in the F.B.I.'s identification files, commonly known as 'rap sheet.'" Criminal history information contained in documents other than "rap sheets," Bell explained, "might be released if not otherwise exempt under the Freedom of Information Act." The Attorney General went on to explain that the Department's release of William Medico's "rap sheet" to plaintiff Schakne stemmed from the fact that "the Department's position on the release of 'rap sheet' has not been clear in the past. . . . [A]fter comprehensive review given this issue,

. . . [the Department] is now of the view that we are prohibited from releasing *any* "rap sheets" except as specifically authorized by law."

26. On April 21, 1980, defendants moved this Court for Summary Judgment on the ground that the records sought "are specifically exempted from disclosure to the press and the general public under 28 U.S.C. 534 and, accordingly, are within Exemption 3 of the FOIA." Alternatively, defendants contend that the information sought "may be exempt from disclosure under Exemption 6 of the FOIA." Defendants, however, "have not undertaken a balancing analysis in the present case because" they argue, "the blanket Exemption 3 claim is dispositive of plaintiffs' FOIA request."

27. On December 11, 1981, defendants supplied plaintiffs with additional documents pertaining to William Medico, with various excisions and deletions.

28. On January 19, 1982, defendants supplied plaintiffs with additional documents pertaining to William Medico, with various excisions and deletions.

29. To date, defendants continue to withhold from plaintiffs all information of any kind concerning the requested criminal justice history information relating to Philip, Charles, and/or Samuel Medico.

30. All information sought by plaintiffs is already a matter of public record.

Respectfully submitted,

WILLIAMS & CONNOLLY

/s/ G. DAVID FENSTERHEIM

Kevin T. Baine

G. David Fensterheim

839 17th Street, N.W.

Washington, D.C. 20006

(202) 331-5000

Counsel for Plaintiffs

Dated: 1/31/83

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 79-3308

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS,  
ET AL., PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,  
DEFENDANTS

Hon. JOHN GARRETT PENN

**NOTICE OF FILING:  
DEFENDANTS' SUGGESTION OF PARTIAL MOOTNESS**

**PRELIMINARY STATEMENT**

This Freedom of Information Act (FOIA) suit seeks "to compel defendants to produce certain records—namely, any records indicating any arrests, indictments, acquittals, convictions and sentences of Phillip Medico, Charles Medico, or Samuel Medico," Complaint at ¶ 1. Several issues in this suit have been mooted by the occurrence of two recent, unanticipated events beyond defendants' control. Accordingly, plaintiffs' claims as to those issues should be dismissed.

**STATEMENT OF THE CASE**

As the documents attached as Exhibits 1 through 8 relate, defendants have administratively released all criminal information concerning two subjects of plaintiffs' FOIA request—a Phillip and a Samuel Medico—who have

recently died.<sup>1</sup> Defendants have administratively searched all of their systems of records to which plaintiffs' request was referred, and have administratively released the attached documents solely to be consistent with the unique, pre-litigation administrative decision of Mr. Quinlan J. Shea, Jr., former Director of the Department of Justice Office of Privacy and Information Appeals, to release criminal information concerning a William Medico, who was likewise deceased. See Plaintiffs' Statement Of Material Facts As To Which There Is No Genuine Dispute at Exhibit 6 (January 31, 1983) (hereinafter "Plaintiffs' Statement"). See also Defendants' Notice Of Filing (FOIA—Search Declarations) (January 29, 1982) (filed in response to this Court's December 17, 1981 Order). Plaintiffs' FOIA request for criminal information concerning Phillip and Samuel Medico, therefore, has been administratively fulfilled under the unique circumstances of this request.<sup>2</sup>

<sup>1</sup> As set forth in Defendants' Notice of Filing (FOIA—Search Declarations) (January 29, 1982), two components of the Department of Justice to which plaintiffs' request had been referred—the Bureau of Prisons and the Executive Office for United States Attorneys—did not locate any responsive records concerning any subject of plaintiffs' request. The attached documents therefore further respond for only the three remaining Department of Justice components to which plaintiffs' request had been referred: the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Criminal Division.

<sup>2</sup> Defendants' unique administrative release of a deceased individuals' criminal information under the particular circumstances of this request does not constitute a waiver of FOIA exemptions with respect to either the remaining Charles Medico's (or any other person's) rap sheet, if any exists. See *Murphy v. Federal Bureau of Investigation*, 490 F. Supp. 1138 at 1141 (D.D.C. 1980), citing *Krohn v. Department of Justice*, No. 79-0667 at 4-5 (D.D.C. September 7, 1979); *Safeway Stores, Inc. v. FTC*, 428 F. Supp. 346 at 347 (D.D.C. 1977).

Further, plaintiffs have now advanced, and defendants have administratively discerned, a legitimate public interest purpose in the administrative disclosure of "financial crime" information concerning the only remaining subject of plaintiffs' FOIA request, a Charles Medico. Plaintiffs' Statement at ¶ 11 (January 31, 1983). See Plaintiffs' Statement Exhibit 6 (where defendants requested an articulation of the public interest underlying plaintiffs' request on June 14, 1978). As the documents attached as Exhibits 1 through 8 relate, defendants have administratively searched all of their systems of records to which plaintiffs' request was referred—other than the Federal Bureau of Investigation Identification Division's fingerprint card, or "rap sheet", files—but have located no financial crime information concerning a Charles Medico to be administratively released in the public interest.<sup>3</sup> Plaintiffs' FOIA request for financial crime information concerning a Charles Medico which might be summarized in any record other than a rap sheet, therefore, has been administratively fulfilled under the unique circumstances of this request.

<sup>3</sup> As fully explained in Defendants' Memorandum Of Points and Authorities In Opposition To Plaintiffs' Motion For Summary Judgment, And In Reply To Plaintiffs' Opposition To Defendants' April 21, 1980 Motion For Summary Judgment at Part III, A and B (April 29, 1983), filed simultaneously herewith, defendants maintain that they can neither confirm nor deny whether any non-financial crime information might be summarized in any record maintained by defendants. FOIA disclosure of any such non-financial crime information which might be summarized in any record maintained by defendants, including a rap sheet, would not be in the public interest and would constitute either a clearly unwarranted or an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) or (b)(7)(C). Alternatively, FOIA disclosure of any rap sheet of a Charles Medico which might contain either financial or non-financial crime information is



### ARGUMENT

Defendants' administrative release of the above information has rendered plaintiffs' judicial request for that information moot. As stated in *Perry v. Block*, 684 F.2d 121 (D.C. Cir. 1982): "[H]owever fitful or delayed the release of information under the FOIA may be, once all requested records are surrendered, federal courts have no further statutory function to perform." *Id.* at 125. Likewise, this Circuit has held in *Crooker v. United States State Department*, 628 F.2d 9 (D.C. Cir. 1980) that "[o]nce records are produced the substance of the [FOIA] controversy disappears and becomes moot since the disclosure which the suit seeks has already been made." *Id.* at 10. Accord *Turner v. Schweiker*, No. 81-1485, 2 G.D.S. ¶ 81,311 at 81,852 (D.C. Cir. 1981); *Ackerly v. Long*, 420 F.2d 1136 at 1340 (D.C. Cir. 1969). At least that portion of this FOIA suit which seeks to compel disclosure of criminal information concerning a deceased Phillip and Samuel Medico, as well as that portion of this suit which seeks to compel disclosure of financial crime information concerning a Charles Medico, therefore, should be dismissed as moot.<sup>4</sup> The information which plaintiffs had sought through

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exempted from disclosure by 28 U.S.C. § 534 in accordance with FOIA Exemption 3, 5 U.S.C. § 552(b)(3).

Based on plaintiffs' January 31, 1983 statement of public interest in, and intended use of, only "financial crime" information, it appears that plaintiffs may have abandoned their request for any other criminal information, if in fact plaintiffs ever actually sought or meant to seek such information. If plaintiffs have in fact narrowed their request to seek financial crime information only, then any previous issue concerning FOIA disclosure of non-financial crime information also is moot. See Plaintiffs' Statement of Material Facts As To Which There Is No Genuine Dispute at ¶ 11 (January 31, 1983).

<sup>4</sup> If plaintiffs do not seek information as to non-financial crimes concerning a Charles Medico, if any, that claim also should be dismissed as moot.

their FOIA suit has been administratively disclosed as a result of unanticipated events beyond defendants' control which recently occurred.

### CONCLUSION

For the foregoing reasons, this suit should be dismissed as moot in pertinent part.

Respectfully submitted,

J. PAUL McGRATH  
Assistant Attorney General

STANLEY S. HARRIS  
United States Attorney

/s/ BARBARA L. GORDON  
BARBARA L. GORDON

/s/ PETER W. WALDMEIR  
PETER W. WALDMEIR

Attorneys, Department of Justice  
Civil Division, Rm. 3326  
10th & Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Attorneys for Defendants.



## EXHIBIT 1

U.S. DEPARTMENT OF JUSTICE  
WASHINGTON, D.C. 20530

April 29, 1983

Mr. Robert Schakne  
CBS News  
2020 M Street, N.W.  
Washington, D.C. 20036

Dear Mr. Schakne:

This is in reference to your February 3, 1978 Freedom of Information Act (FOIA) request pertaining to "William Medico (now deceased), Phillip Medico, Charles Medico, or Samuel Medico." The requested information pertaining to a deceased William Medico has been released beginning June 14, 1978.

Both Phillip and Samuel Medico have died since the filing of your FOIA request. We therefore conducted a new search of the Criminal Division central index but found no documents responsive to your request concerning these two deceased individuals. If a rap sheet had been discovered during a search of Criminal Division records, it would have been referred to the Federal Bureau of Investigation (FBI) for direct response to you under the FOIA.

With respect to your FOIA request concerning a Charles Medico, we have determined that the disclosure of any financial crime information which might be found in Criminal Division records would be in the public interest as contained in FOIA exemptions 6 and 7(C), 5 U.S.C. §552(b)(6) and (b)(7)(C). A search of Criminal Division records, however, has produced no financial crime information concerning a Charles Medico.

The Criminal Division continues to maintain that it can neither confirm nor deny whether any other criminal information concerning a Charles Medico might be found in its records. Disclosure of any other criminal information concerning a Charles Medico would constitute either a clearly unwarranted or an unwarranted invasion of privacy. If a rap sheet had been discovered during a search of Criminal Division records concerning a Charles Medico, that record would have been referred to the FBI for direct response to you under the FOIA.

This latter will supplement the Criminal Division's response to your FOIA request based on the above information which recently has come to the agency's attention.

Sincerely,

DOUGLAS S. WOOD

DOUGLAS S. WOOD

Associate Director  
Office of Legal Support Services  
Criminal Division

## EXHIBIT 2

U.S. DEPARTMENT OF JUSTICE  
WASHINGTON, D.C. 20530

April 29, 1983

Mr. Jack C. Landau, Director  
The Reporters Committee for  
Freedom of the Press  
Room 1112  
1750 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

This is in reference to your September 21, 1978 Freedom of Information Act (FOIA) request pertaining to "William Medico (now deceased), Phillip Medico, Charles Medico, or Samuel Medico." The requested information pertaining to a deceased William Medico has been released beginning June 14, 1978.

Both Phillip and Samuel Medico have died since the filing of your FOIA request. We therefore conducted a new search of the Criminal Division central index but found no documents responsive to your request concerning these two deceased individuals. If a rap sheet had been discovered during a search of Criminal Division records, it would have been referred to the Federal Bureau of Investigation (FBI) for direct response to you under the FOIA.

With respect to your FOIA request concerning a Charles Medico, we have determined that the disclosure of any financial crime information which might be found in Criminal Division records would be in the public interest as contained in FOIA exemptions 6 and 7(C), 5 U.S.C. §552(b)(6) and (b)(7)(C). A search of Criminal Division

records, however, has produced no financial crime information concerning a Charles Medico.

The Criminal Division continues to maintain that it can neither confirm nor deny whether any other criminal information concerning a Charles Medico might be found in its records. Disclosure of any other criminal information concerning a Charles Medico would constitute either a clearly unwarranted or an unwarranted invasion of privacy. If a rap sheet had been discovered during a search of Criminal Division records concerning a Charles Medico, that record would have been referred to the FBI for direct response to you under the FOIA.

This latter will supplement the Criminal Division's response to your FOIA request based on the above information which recently has come to the agency's attention.

Sincerely,

DOUGLAS S. WOOD

DOUGLAS S. WOOD

Associate Director  
Office of Legal Support Services  
Criminal Division

## EXHIBIT 3

U.S. DEPARTMENT OF JUSTICE  
DRUG ENFORCEMENT ADMINISTRATION

April 29, 1983

Mr. Robert Schakne  
CBS News  
2020 M Street, N.W.  
Washington, D.C. 20036

Dear Mr. Schakne:

This is in reference to your February 3, 1978 Freedom of Information Act (FOIA) request pertaining to "William Medico (deceased), Phillip Medico, Charles Medico or Samuel Medico." The requested information pertaining to a deceased William Medico has been administratively released since June 14, 1978, or thereafter, consistent with the administrative decision of Quinlan J. Shea, Jr., then-Director, Office of Privacy and Information Appeals, Department of Justice.

Both a Phillip and Samuel Medico have died since the filing of your FOIA request. Consistent with the unique administrative release of documents pertaining to a deceased William Medico, the Drug Enforcement Administration (DEA) has administratively determined that any DEA records responsive to your FOIA request concerning a deceased Phillip and Samuel Medico may be released under these unique circumstances. A search of DEA records, however, has produced no documents responsive to your request concerning these two deceased individuals. If a rap sheet had been discovered during a search of DEA records pertaining to these deceased individuals, that record would have been referred to the Federal Bureau of Investigation (FBI) for direct response to you under the FOIA.

With respect to your FOIA request concerning a Charles Medico, it has been administratively determined that any financial crime information which might have been found in DEA records could have been disclosed in the public interest consistent with FOIA Exemptions 6 and 7(C), 5 USC and 552(b)(6) and (b)(7)(C). A search of DEA records, however, has produced no financial crime information concerning a Charles Medico. The Drug Enforcement Administration continues to maintain that it can neither confirm nor deny whether any other criminal information concerning a Charles Medico might be found in its records. Disclosure of any other criminal information concerning a Charles Medico would constitute either a clearly unwarranted or an unwarranted invasion of privacy. If a rap sheet(s) had been discovered during a search of DEA records concerning a Charles Medico, that record would have been referred to the FBI for direct response to you under the FOIA.

This will supplement the Drug Enforcement Administration's response to your FOIA request based on the above information which recently has come to the agency's attention.

Sincerely,

PAUL BROWN

PAUL BROWN  
Chief

Freedom of Information  
Section  
Drug Enforcement  
Administration  
Department of Justice

cc: Kevin T. Baine, Esq.  
G. David Fensterheim,  
Esq.  
William & Connolly  
839 17th Street, N.W.  
Washington, D.C.  
20006



## EXHIBIT 4

U.S. DEPARTMENT OF JUSTICE  
DRUG ENFORCEMENT ADMINISTRATION

April 29, 1983

Mr. Jack C. Landau, Director  
The Reports Committee for  
Freedom of the Press  
Room 1112  
1750 Pennsylvania Avenue, N.W.  
Washington, D.C. 20036

Dear Mr. Landau:

This is in reference to your September 21, 1978 Freedom of Information Act (FOIA) request pertaining to "William Medico (deceased), Phillip Medico and Charles Medico, aka Samuel Medico." The requested information pertaining to a deceased William Medico has been administratively released since June 14, 1978, or thereafter, consistent with the administrative decision of Quinlan J. Shea, Jr., then-Director, Office of Privacy and Information Appeals, Department of Justice.

Both a Phillip and Samuel Medico have died since the filing of your FOIA request. Consistent with the unique administrative release of documents pertaining to a deceased William Medico, the Drug Enforcement Administration (DEA) has administratively determined that any DEA records responsive to your FOIA request concerning a deceased Phillip and Samuel Medico may be released under these unique circumstances. A search of DEA records, however, has produced no documents responsive to your request concerning these two deceased individuals. If a rap sheet had been discovered during a search of DEA records pertaining to these deceased individuals, that

record would have been referred to the Federal Bureau of Investigation (FBI) for direct response to you under the FOIA.

With respect to your FOIA request concerning a Charles Medico, it has been administratively determined that any financial crime information which might have been found in DEA records could have been disclosed in the public interest consistent with FOIA Exemptions 6 and 7(C), 5 USC and 552(b)(6) and (b)(7)(C). A search of DEA records, however, has produced no financial crime information concerning a Charles Medico. The Drug Enforcement Administration continues to maintain that it can neither confirm nor deny whether any other criminal information concerning a Charles Medico might be found in its records. Disclosure of any other criminal information concerning a Charles Medico would constitute either a clearly unwarranted or an unwarranted invasion of privacy. If a rap sheet(s) had been discovered during a search of DEA records concerning a Charles Medico, that record would have been referred to the FBI for direct response to you under the FOIA.

This will supplement the Drug Enforcement Administration's response to your FOIA request based on the above information which recently has come to the agency's attention.

Sincerely,

PAUL BROWN

PAUL BROWN

Chief

Freedom of Information  
Section  
Drug Enforcement  
Administration  
Department of Justice

cc: Kevin T. Baine, Esq.  
G. David Fensterheim,  
Esq.  
William & Connolly  
839 17th Street, N.W.  
Washington, D.C.  
20006

## EXHIBIT 5

U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

Washington, D.C. 20535

Mr. Robert Schakne  
CBS News  
2020 M Street, N.W.  
Washington, D.C. 20036

Dear Mr. Schakne:

Reference is made to your February 3, 1978, Freedom of Information Act (FOIA) request pertaining to "William Medico (deceased), Phillip Medico, Charles Medico or Samuel Medico."

Information received by the Federal Bureau of Investigation (FBI) indicates that Phillip and Samuel Medico are now deceased. To be consistent with the administrative decision of Quinlan J. Shea, Jr., former Director, Office of Privacy and Information Appeals, Department of Justice, that requested information pertaining to then deceased William Medico be released, it has been administratively determined that any FBI records responsive to your FOIA request concerning Phillip and Samuel Medico be released.

Searches of the General Indices of the Central Records System at FBI Headquarters (FBIHQ) concerning any arrests, indictments, acquittals, convictions or sentences of Phillip and Samuel Medico were undertaken. Enclosed are the only records identifiable with your request concerning Phillip Medico. These documents have been processed by the FBI's Records Management Division, and portions of the information have been deleted to protect information

which is exempt from disclosure pursuant to Title 5, United States Code, Section 552 (b)(7)(D). This exemption is cited to protect the identity of a local law enforcement agency that provided the FBI with information. The information marked "Outside the Scope" has been deemed not pertinent to your request and, therefore, no specific FOIA exemption was cited. The FBI was unable to locate any record responsive to your request identifiable with Samuel Medico.

In regard to your FOIA request concerning a Charles Medico, any financial crime information which might be contained in the FBI Central Records System could be disclosed in the public interest. However, a search of the General Indices of the Central Records System at FBIHQ failed to locate any financial crime information concerning Charles Medico. It continues to be the position of the FBI that it cannot be stated on the public record whether a search of the Central Records System did or did not disclose any other criminal information as to Charles Medico. What can be stated, however, is that if such requested information did exist it would be exempt from disclosure pursuant to Title 5, United States Code, Section 552 (b)(6) and (b)(7)(C).

This letter supplements the FBI's response concerning your FOIA request pertaining to Phillip Medico, Charles Medico or Samuel Medico.

Sincerely yours,

JAMES K. HALL

James K. Hall, Chief  
Freedom of Information —  
Privacy Acts Section  
Records Management Division

Enclosure

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] outside  
the  
SCOPE

[REDACTED] b7d

[REDACTED] PHILLIP FELICO, 137  
Elizabeth Street, Pittston, Pa., was arrested on September 2,  
1930, for violation of a City Ordinance. b7d

[REDACTED] b7d

[REDACTED] No disposition or other information concerning  
the City Ordinance violated was set forth in the records.  
Disposition was listed as "fined \$100 by Mayor LANGAN." b7d

[REDACTED] b7d

[REDACTED] on  
September 2, 1930, PHILLIP FELICO, 137 Elizabeth Street, Pittston,  
Pa., was arrested for transporting intoxicants, liquor. b7d

[REDACTED] for transporting intoxicants, liquor.  
On September 3, 1930, he was found guilty and fined \$100.

[REDACTED] outside  
the  
SCOPE

[REDACTED]

[REDACTED]

[REDACTED] outside  
the  
SCOPE

[REDACTED] b7d

[REDACTED] PHILLIP  
FELICO, 137 Elizabeth Street, Pittston, Pa., was arrested  
on September 2, 1930, for violation of a City Ordinance. b7d

[REDACTED] No disposition  
or other information concerning the City Ordinance violated  
was set forth in the records. Disposition was listed as  
"fined \$100 by Mayor LANGAN." b7d

[REDACTED] b7d

[REDACTED] on September 2, 1930, PHILLIP FELICO, 137 Elizabeth  
Street, Pittston, Pa., was arrested for transporting  
intoxicants, liquor. On September 3, 1930, he was found  
guilty and fined \$100.00. b7d

[REDACTED] outside  
the  
SCOPE



## EXHIBIT 6

U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

Washington, D.C. 20535

Mr. Jack C. Landau, Director  
The Reporters Committee for  
Freedom of the Press  
Room 1112  
1750 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Dear Mr. Landau:

Reference is made to your September 21, 1978, Freedom of Information Act (FOIA) request pertaining to "William Medico (now deceased), Phillip Medico and Charles Medico, aka Samuel Medico."

Information received by the Federal Bureau of Investigation (FBI) indicates that Phillip and Samuel Medico are now deceased. To be consistent with the administrative decision of Quinlan J. Shea, Jr., former Director, Office of Privacy and Information Appeals, Department of Justice, that requested information pertaining to then deceased William Medico be released, it has been administratively determined that any FBI records responsive to your FOIA request concerning Phillip and Samuel Medico be released.

Searches of the General Indices of the Central Records System at FBI Headquarters (FBIHQ) concerning any arrests, indictments, acquittals, convictions or sentences of Phillip and Samuel Medico were undertaken. Enclosed are the only records identifiable with your request concerning Phillip Medico. These documents have been processed by the FBI's Records Management Division, and portions of

the information have been deleted to protect information which is exempt from disclosure pursuant to Title 5, United States Code, Section 552 (b)(7)(D). This exemption is cited to protect the identity of a local law enforcement agency that provided the FBI with information. The information marked "Outside the Scope" has been deemed not pertinent to your request and, therefore, no specific FOIA exemption was cited. The FBI was unable to locate any record responsive to your request identifiable with Samuel Medico.

In regard to your FOIA request concerning a Charles Medico, any financial crime information which might be contained in the FBI Central Records System could be disclosed in the public interest. However, a search of the General Indices of the Central Records System at FBIHQ failed to locate any financial crime information concerning Charles Medico. It continues to be the position of the FBI that it cannot be stated on the public record whether a search of the Central Records System did or did not disclose any other criminal information as to Charles Medico. What can be stated, however, is that if such requested information did exist it would be exempt from disclosure pursuant to Title 5, United States Code, Section 552 (b)(6) and (b)(7)(C).

This letter supplements the FBI's response concerning your FOIA request pertaining to Phillip Medico, Charles Medico or Samuel Medico.

Sincerely yours,

JAMES K. HALL

James K. Hall, Chief  
Freedom of Information –  
Privacy Acts Section  
Records Management Division

Enclosure

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] outside  
the  
scope

[REDACTED] b7d

[REDACTED] PHILLIP MEXICO, 137  
Elizabeth Street, Pittston, Pa., was arrested on September 2,  
1930, for violation of a City Ordinance. b7d

[REDACTED] b7d

[REDACTED] No disposition or other information concerning  
the City Ordinance violated was set forth in the records.  
Disposition was listed as "Fined \$100 by Mayor LANGAN." b7d

[REDACTED] b7d

[REDACTED] on  
September 2, 1930, PHILLIP MEXICO, 137 Elizabeth Street, Pittston,  
Pa., was arrested for transporting intoxicants, liquor. b7d

[REDACTED] on September 3, 1930, he was found guilty and fined \$100.

[REDACTED] outside  
the  
scope

- 4 -

144-261

[REDACTED]

[REDACTED] outside  
the  
scope

[REDACTED] b7d

[REDACTED] PHILLIP  
MEXICO, 137 Elizabeth Street, Pittston, Pa., was arrested  
on September 2, 1930, for violation of a City Ordinance. b7d

[REDACTED] No disposition  
or other information concerning the City Ordinance violated  
was set forth in the records. Disposition was listed as  
"Fined \$100 by Mayor LANGAN." b7d

[REDACTED] b7d

[REDACTED] on September 2, 1930, PHILLIP MEXICO, 137 Elizabeth  
Street, Pittston, Pa., was arrested for transporting  
intoxicants, liquor. On September 3, 1930, he was found  
guilty and fined \$100.00. b7d

[REDACTED] outside  
the  
scope

- 9 -

144-262

## EXHIBIT 7

U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

April 29, 1983

Mr. Robert Schakne  
CBS News  
2020 M Street, N.W.  
Washington, D.C. 20036

Dear Mr. Schakne:

Reference is made to your February 3, 1978, Freedom of Information Act (FOIA) request pertaining to "William Medico (now deceased), Phillip Medico, Charles Medico or Samuel Medico."

Information received by the Federal Bureau of Investigation (FBI) indicates that Phillip and Samuel Medico are now deceased. To be consistent with the administrative decision of Quinlan J. Shea, Jr., former Director, Office of Privacy and Information Appeals, Department of Justice, that requested information pertaining to then deceased William Medico be released, it has been administratively determined that any FBI identification records responsive to your FOIA request concerning Phillip and Samuel Medico be released.

Searches of the FBI Identification Division's Criminal File failed to disclose any identification records identifiable with Phillip Medico or Samuel Medico.

It continues to be the position of the FBI that it cannot be stated on the public record whether a search of the Identification Division Records System did or did not

disclose a record containing the information you requested as to Charles Medico. It can only be stated that, if such a record exists, it would be exempt from disclosure pursuant to Title 5, U.S.C., Section 552(b)(3), (b)(6) and (b)(7)(C).

Sincerely yours,

MELVIN D. MERCER, JR.

Melvin D. Mercer, Jr., Chief  
Recording Section  
Identification Division

Kevin T. Baine, Esq.  
G. David Fensterheim, Esq.  
Williams & Connolly  
839 17th Street, N.W.  
Washington, D.C. 20006



## EXHIBIT 8

U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

April 29, 1983

Mr. Jack Landau, Director  
The Reporters Committee for  
Freedom of the Press  
Room 1112  
1750 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Dear Mr. Landau:

Reference is made to your September 21, 1978, Freedom of Information Act (FOIA) request pertaining to "William Medico (now deceased), Phillip Medico and Charles Medico, aka Samuel Medico."

Information received by the Federal Bureau of Investigation (FBI) indicates that Phillip and Samuel Medico are now deceased. To be consistent with the administrative decision of Quinlan J. Shea, Jr., former Director, Office of Privacy and Information Appeals, Department of Justice, that requested information pertaining to then deceased William Medico be released, it has been administratively determined that any FBI identification records responsive to your FOIA request concerning Phillip and Samuel Medico be released.

Searches of the FBI Identification Division's Criminal File failed to disclose any identification records identifiable with Phillip Medico or Samuel Medico.

It continues to be the position of the FBI that it cannot be stated on the public record whether a search of the

Identification Division Records System did or did not disclose a record containing the information you requested as to Charles Medico. It can only be stated that, if such a record exists, it would be exempt from disclosure pursuant to Title 5, U.S.C., Section 552(b)(3), (b)(6) and (b)(7)(C).

Sincerely yours,

MELVIN D. MERCER, JR.

Melvin D. Mercer, Jr., Chief  
Recording Section  
Identification Division

Kevin T. Baine, Esq.  
G. David Fensterheim, Esq.  
Williams & Connolly  
839 17th Street, N.W.  
Washington, D.C. 20006

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 79-3308

THE REPORTERS COMMITTEE FOR THE  
FREEDOM OF THE PRESS, ET AL., PLAINTIFFS,

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,  
DEFENDANTS.

Hon. JOHN GARRETT PENN

**AFFIDAVIT OF ROBERT SCHAKNE**

I, Robert Schakne, have and been duly sworn, do hereby depose, under penalty of perjury, as follows:

1. I am a news correspondent employed by CBS News, a division of CBS, Inc., and I am a plaintiff in this action.

2. I make this affidavit in support of plaintiffs' motion for summary judgment filed herein.

3. On several occasions in 1978 and 1979, including meetings and/or conversations on February 3, 1978, July 6, 1978, July 31, 1978, and May 3, 1979, I spoke with the following officials of the Department of Justice concerning the Freedom of Information Act request which is the subject of this lawsuit: Robert Stevenson, Mary Lawton, Jim Jardine, Terrence Adamson, and Robert Havel. On these occasions I made clear that I sought the information which is the subject of my request in connection with my investigation of the then public allegations of corruption involving Congressman Daniel Flood. Specifically, I am certain that I pointed out that I sought the information because I had learned that Medico Industries, an organization identified in the Pennsylvania

Crime Commission report as "dominated by organized crime" had received millions of dollars in federal funds for Defense Department contracts and that Congressman Flood had been instrumental in arranging these contracts. On several occasions, I personally argued to these official that this strong public interest must be weighed against whatever minimal privacy interest might exist in already public information.

Robert Schakne

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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Civil Action No. 79-3308

THE REPORTERS COMMITTEE FOR THE  
FREEDOM OF THE PRESS, ET AL., PLAINTIFF,

v.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,  
DEFENDANTS.

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HON. JOHN GARRETT PENN

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**NOTICE OF COMPLIANCE WITH COURT'S ORAL REQUEST  
AND FILING OF IN CAMERA DECLARATION**

On May 3, 1985, the Court requested an in camera review of any documents pertaining to a Charles Medico that defendants have withheld. While defendants maintain that they can neither confirm nor deny the existence of any rap sheet or non-financial criminal history records pertaining to a Charles Medico, to the extent that any such documents exist, they have been supplied to the Court in compliance with the Court's oral request. Defendants have

also submitted the In Camera Declaration of Special Agent David Cook.

Respectfully submitted,

RICHARD K. WILLARD  
Acting Assistant Attorney General

JOSEPH E. diGENOVA  
United States Attorney

BARBARA L. GORDON

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ROBERT S. LAVET

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Tele: (202) 633-1275



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Hon. JOHN GARRETT PENN

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Filed August 20, 1985

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**NOTICE OF COMPLIANCE WITH COURT'S REQUEST  
AND FILING OF IN CAMERA DECLARATION**

In its memorandum decision dated August 5, 1985, the Court required defendants to file a statement, *in camera*, with the Court in response to plaintiff's request for information concerning Charles Medico. Defendants have complied with the Court's directive by filing the *In Camera*

Declaration of Special Agent David Cook, dated August 15, 1985.

Respectfully submitted,

RICHARD K. WILLARD  
Acting Assistant Attorney General

JOSEPH E. diGENOVA  
United States Attorney

BARBARA L. GORDON

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**In the Supreme Court of the United States**

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No. 87-1379

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,  
PETITIONERS

v.

REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, ET AL.

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ORDER ALLOWING CERTIORARI. Filed April 18, 1988.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.